ELECTRONIC LEGAL INFORMATION

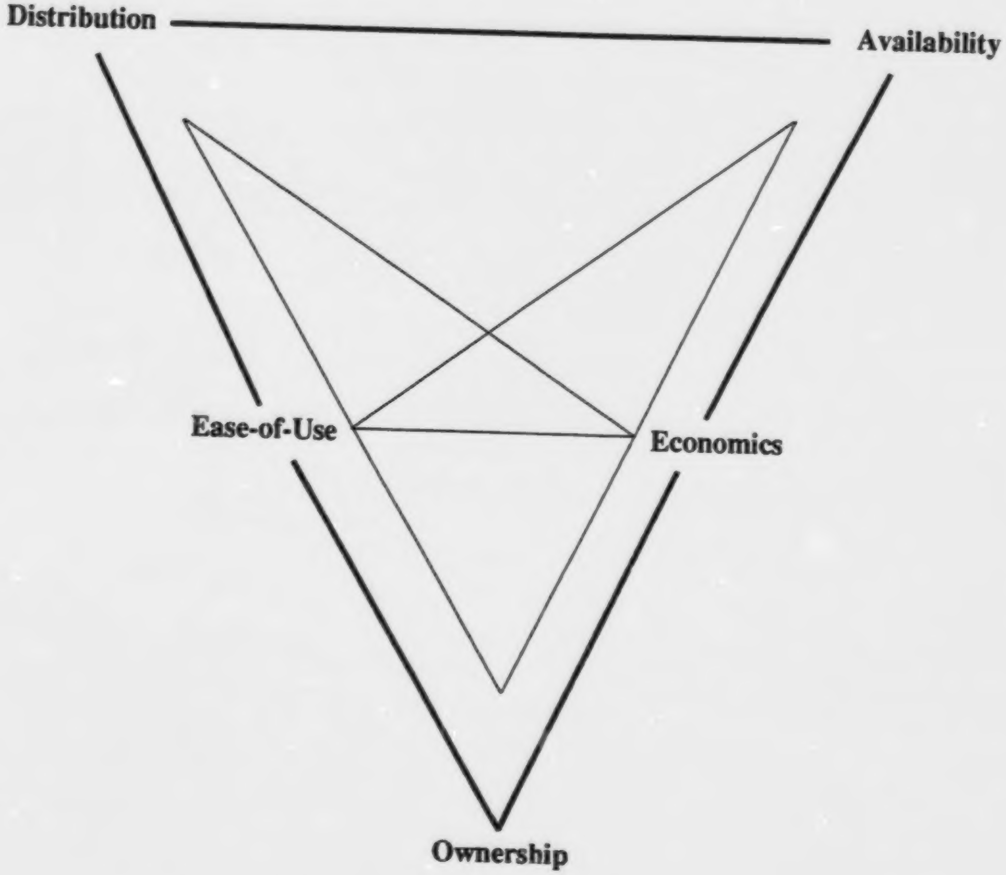
EXPLORING ACCESS ISSUES

DISTRIBUTION
ECONOMICS
AVAILABILITY
EASE OF USE
OWNERSHIP

CANADIAN LEGAL INFORMATION CENTRE

Canadian Legal Information Centre

Electronic Legal Information: Exploring Access Issues


Distribution
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Canadian Legal Information Centre

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1. INTRODUCTION

- **What are the objectives of this paper?**
- **How broad is its scope?**
- **To whom is this paper directed?**

1.1. OBJECTIVES

The objectives of this paper are to provide a springboard for public discussion about the major issues surrounding "public access to electronic legal information" and to provide a voice for "public access" concerns. It is intended that this paper identify the issues, present their interrelationships and clarify the forces that affect the decisions made in this area.

By compiling a compendium of issues surrounding the electronic availability of government legal information, the Canadian Legal Information Centre (CLIC) hopes to foster exploration of this subject. To that same end, CLIC has put together a national Task Force, comprising experts in relevant areas. Its mandate is to generate, for CLIC's consideration, both action plans and policy initiatives based on the content of this document.

CLIC will also invite experts and interested parties to participate in a Forum in the Spring of 1991, where further explanation and clarification of the issues can be achieved. Through these initiatives, CLIC hopes to contribute to the development of government policy in this area.

1.2. SCOPE

This paper is intended to be an overview rather than a thorough presentation of the issues. The focus was to have been exclusively on primary legal information. Yet, legal information is neither produced nor disseminated in a vacuum. Decisions made about government information policy and activities concerning government information affect government legal information. Hence, issues surrounding public access to electronic government information in general have been included. For the purposes of this paper, legal information consists of judgments, statutes and regulations. Although examples relating to other types of electronic government information have been included for the purposes of comprehensiveness or clarification, the focus is on the effects of the issues and activities as they apply to legal information.

Presenting the major issues surrounding public access to electronic legal information also remains the thrust of this paper. However, the numerous government projects now underway are part of a larger process of information technology development. A framework of the underlying developmental process is included to assist the investigation of these issues by placing them in a larger context.

1.3. AUDIENCE

This paper has been written for people with a variety of backgrounds and areas of expertise. The contributors to the paper represent areas including law, technology, information, information management and library science. It is anticipated that the readers' backgrounds will be as broad.

1.4. THE ISSUES

Once this project was initiated, it quickly became apparent that the number of issues surrounding "public access to electronic legal information" was extremely large. It also became apparent that the interrelationship of these issues is significant both in magnitude and ramification. In addition, the environment in which electronic information products are being developed is changing so rapidly that the context in which these issues are embedded constantly shifts.

Each section focuses on a piece of the puzzle and should be viewed as only a part of the solution. The graphic at the beginning of this paper illustrates the interrelationships between the facets of electronic legal information so important to us today.

2. A CONCEPTUAL FRAMEWORK

- **What is the Information Technology Development Process?**
- **How does it apply to electronic databases on law?**
- **Where is Canada in this process?**
- **What is the evolution information technology undergoes within an organization?**

The development of databases by or for government is expanding in most jurisdictions. As the transition to increased electronic availability of legal and other types of government information occurs, issues relating to public access arise. These issues have long-term implications. An overview of the issues is presented in this paper. This will allow those resolving the issues and those affected by the decisions to have a clearer picture of the entire situation. It is particularly important to understand the interrelationship of the issues. The presentation of the issues is the primary objective of this paper.

A secondary objective is the provision of a framework for resolution of the issues. The Information Technology Development Process, a six step process discussed later in this section, provides such a framework. Originally applied to the development of information systems, this process has also been applied to the development of information and information technology. By overlaying their current situation with knowledge of the process and the issues that typically arise throughout it, senior management in business and government have obtained a new perspective and a clearer sense of direction. Because the process is a road map showing where other organizations have been and what issues they have faced along the way, its use enables senior management to lead the organization through the stages with the least disruption while obtaining the greatest benefit from the growth of information technology.

2.1. INFORMATION TECHNOLOGY DEVELOPMENT PROCESS

More than fifteen years ago, Cyrus F. Gibson and Richard L. Nolan, co-founder of Nolan, Norton and Company, developed what they called the "stage theory" of information systems. This theory described the evolution of information systems and the use of such systems in organizations. Having studied hundreds of organizations using computers, Gibson and Nolan identified stages through which they pass as they proceed through the process.

During the past fifteen years, others have observed this process and contributed to the original theory. The process has been applied to the development of information technology within organizations. Information technology (IT) is a phrase used to describe all the things we do with information, in any or all of its forms: data, text, voice and image. It includes storage, processing, communications and retrieval. It refers to the equipment and software required for computing and electronic communications and to the skills, knowledge and experience of the people involved.

The process described in the mid-1970s has undergone several transformations as the utilization of IT within organizations has advanced, and organizations have moved beyond the four stages originally identified. Currently, there are six generally accepted stages in the IT development process. Experts have applied different labels to them. For the purposes of this paper, they are referred to as:

1. Introduction
2. Expansion
3. Control
4. Institutionalization
5. Introduction of New Technology
6. Consolidation

The most significant enhancement made to the Gibson, Nolan stage theory is the identification of the iterative nature of the process. IT experts, including Art Benjamin, subscribe to this refinement of the original theory. This view holds that when IT is first introduced, the organization proceeds in lock step through the stages of development. Senior management and the corporate information systems (IS) group typically lead the way. The stages of the process are repeated each time a new form of IT is introduced to the organization and each time a new department is introduced to IT. Having learned from their first exposure to the process, senior management and the corporate IS group can facilitate subsequent passages through the process. These subsequent passages are usually smoother, and the stages are shorter.

2.1.1 Introduction

The process is initiated when IT is introduced into the organization. Ordinarily, this is prompted by a single department and is justified by operating and cost efficiencies. Senior management has adopted a "wait and see" attitude, and an assessment of the long-term ramifications is rare. Responsibility for the computer is usually assigned to the department for which the first application has been purchased or developed. For a variety of reasons, this department tends to become protective of and keenly interested in controlling this resource.

The addition of applications, both within and outside that owner department, leads to the creation of a central, autonomous department charged with the management of IT. A significant issue arises as control is transferred from the owner department to the information systems (IS) department. Reluctance on the part of the owner department to relinquish control, influence and status can create conflict that leads to management turnover and friction. The provision of computer services across departments is frequently delayed and made more difficult.

Another significant issue is the management of disruption to the organization. Fear of job displacement, new skill requirements, performance inadequacies and loss of personal identity often lead to resistance, a loss in productivity and enthusiasm and, in a surprising number of cases, sabotage. Although these anxieties are well-founded, they are often out of proportion and overgeneralized. Management can eliminate some of them and reduce others by providing clear and factual information about the situation.

2.1.2 Expansion

In stage two, innovation and the extensive application of technology are encouraged. Triggered by excess computing capacity and the desire to increase the range and complexity of applications, this stage is characterized by rapid, unplanned expansion. Mechanisms with which to set project priorities are absent, and moderation exists only through the personnel directly involved in the process. Enthusiastic about the mystique of IT and the progress it brings, senior management typically remains uninvolved in the process until it becomes aware of the degree of growth of both the activity and the budget.

Growth spirals as users appreciate the possibilities available to them through IT and as the IS department gains confidence in its position. The installation of additional capacity leads to the need for increases in personnel, particularly technical specialists. Without formal methods to establish project priorities, resources are often devoted to projects benefitting one group or offering the greatest professional challenge to the specialist rather than projects benefitting the organization as a whole and furthering its overall direction.

It is important that the organization reach a balance between controlling the spiralling expansion with its attendant costs and destroying the motivation of personnel. A mechanism for establishing priorities and criteria in project selection is needed, as are personnel with strong management skills. These skills include the ability to plan, work within a budget and manage projects.

2.1.3 Control

Frequently, management's response to the rapid growth of IT and the escalation of costs is drastic. Sometimes changes are instituted arbitrarily. The IS organization is centralized, planning becomes more formal, elaborate quality control measures are taken and the development of new applications is considerably reduced. This abrupt change can prompt personnel to leave and can cause remaining personnel to adopt defensive, narrow approaches at the expense of full resource utilization in the long run.

While controls are needed, they will be more successful if senior management acknowledges the informal processes and controls already in place. Priorities for project development have been determined, albeit in a fragmented way. Criteria and standards exist, although they have not been created from a senior level perspective. End users and IS professionals have established methods of working with one another. Replacing all of this with new, formal approaches can result in a great deal of resistance.

To minimize resistance while implementing the necessary controls, careful analysis and planning are crucial. Controls must have a necessary purpose that fits in with an overall strategy. Policies and standards must reflect a balance between an appropriate level of flexibility, on one hand, and the efficient and effective utilization of IT, on the other. Where possible, the political issues which dominate at this stage, must be debated before senior management.

2.1.4 Institutionalization

Stage four involves the institutionalization of IT into the organization. According to Peter Keen, an expert in information technology: "Implementation is not just the installation of a technical system in an organization, but the institutionalization of its use in the ongoing context of jobs, formal and informal structures, and personal group processes." In this context, institutionalization means the integration of technology into the work place so it becomes part of the day-to-day functioning of that organization.

During this stage, IT becomes accepted by the organization as an integral and necessary component to the completion of its work and the accomplishment of its objectives. IT is no longer a novelty. It is used, directly or indirectly, by virtually every person in the organization. For example, electronic calendaring schedules meetings and mails notification of them.

2.1.5 Introduction of New Technology

The next stage involves the introduction of more complex applications of IT to a broader audience of users. IT is dispersed throughout the organization via such applications as electronic mail and databases. Networks are developed and expanded so the applications owned by the organization are made available to a wider user base and are leveraged more fully.

As also happened in stage two, an explosion of development often occurs. A significant difference between the two stages exists, however. In stage two, applications were developed on a departmental basis to assist that group in accomplishing its tasks. The applications developed in this stage are designed to facilitate the attainment of organization-wide objectives. The use of electronic mail, for instance, improves communication within an organization and increases efficiency by reducing the amount of time required to share information.

The applications may also change the structure of the organization. The availability of information at the lower levels of an organization can move decision making to lower levels and often results in the reduction or elimination of middle management positions. IT erases the line between management and labour as everyone becomes a knowledge worker. Senior management must take an active role to communicate its direction, to prepare people for new roles and to guide the organization through these changes.

2.1.6 Consolidation

In the final stage, the diversified technology introduced in stage five is consolidated into the organization. In the early stages, IT supported the organization as it existed. By this stage, the organization is using IT to do business differently. IT might be used to create new distribution channels, including electronic channels. It might be employed to create electronic links with suppliers and customers. In stage six, IT is used to build a technology foundation that directly supports the organization's goals and objectives.

These strategic uses of IT are significant jumps from the operational uses for which it was initially introduced into the organization. The risks to the organization are considerably higher, both of utilizing and of not utilizing IT strategically. Senior management is fully involved in decisions related to the strategic uses of this resource, and IT is perceived as being on par with the other critical resources: funds, facilities, materials and people.

2.2. WHERE ARE WE?

Although passage from one stage to another cannot be marked on a calendar, observation of an organization enables one to determine its position in the process. Jurisdictions, even departments within jurisdictions, are at different stages of the process. As a whole, however, government is at the control stage.

2.2.1 The Control Stage

Across Canada, technological advances making the development of information systems easier and less expensive are being utilized. The introduction and expansion of IT can be seen in most jurisdictions. Operational efficiencies and other benefits are being realized. While this progress is being applauded on a project-by-project basis, it is also being noted that this bottom-up development is resulting in technological discontinuity and reduced leverage. Expenditures for IT have increased significantly, and controls are being implemented. The following are some examples of the types of control being introduced.

2.2.2 Development of Policies

Existing policies on information management are being expanded to include electronic information, and new policies are being developed. The *Policy on Government Communications*, the *Treasury Board Guidelines* and the *Access to Information and Privacy Acts* all speak to the management of government information.

The *Information Management Policy* of Treasury Board is new and still evolving. Issues associated with the collection, storage and dissemination of information and any supporting automation technology fall within this policy. The policy integrates law, policy and the management process. It considers competing needs such as economy, efficiency, openness, security and privacy. Its underlying premise is that information is an essential corporate resource and must be managed accordingly. A key goal of the policy is improved service to the public and easier public access to available information.

The *Information Management Policy* reflects that information technology is a strategic tool which must support program delivery and improve productivity. With the implementation of this policy, the federal government is determined to apply life cycle management principles to all information within its sphere of operation and to ensure that all information technology investments are rationalized and managed on a business case basis.

The two primary streams arising from the *Information Management Policy* are *Management of Government Information Holdings* and *Information Technology Management*.

In 1989, the Administrative Policy Branch of the Treasury Board of Canada Secretariat issued a document entitled *Management of Government Information Holdings* (MGIH). This document contains the government's policies and guidelines for "the cost-effective and coordinated management of federal government information holdings" regardless of their form. The government's stated policies are to:

1. manage information holdings as a corporate resource for decision-making, operational, legal, financial and other government and public interest reasons;
2. facilitate the widest possible use of government information, subject to legal and policy constraints;
3. eliminate unnecessary collection of information; and
4. retain historical or archival information.

Through MGIH, government has established broad policies and guidelines for the collection, storage, maintenance, protection and dissemination of information. By requiring the designation of a senior official to represent the Deputy Head regarding these policies, government is taking a more active role in controlling the use of this resource. (See also 6.2.1, Government Policies.)

2.2.3 Government's Role in Information Management

Across Canada, discussions are being held about government's role in the management of information and information technology.

The Director of Information, Industry and Economic Development at Communications Canada has stated that government's role in information management over the next few years is to:

1. Guarantee a free and open market for information;
2. Ensure a vigorous supply of Canadian information materials;
3. Strike an appropriate balance between market forces and government action;
4. Create a favourable environment for industry growth by protecting intellectual property rights;
5. Ensure that a proper communications infrastructure is in place; and
6. Establish a favourable tax regime for research and investment.

The Information Technology Association of Canada (ITAC) has presented possible roles for government in the information technology area and in the economy as a whole. In summary, these three possible positions are:

1. the "Minimum or 'Conservative' State",
2. "Government as a Supporting Player to Promote Excellence", and
3. "Government as a leading Player in a National Development Strategy".

According to the report *The Enabling Effect*, in the first role, government should "confine itself to act as a referee and provide a level playing field." In the second, government should take an active role, although not necessarily the lead, in a national development strategy. Among the support activities government could offer are to provide information, to eliminate institutional bottlenecks, to be a catalyst for strategic alliances and to act as "coach" to private sector firms competing in the global market. In the third role, government could take the lead and coordinate a national development strategy by:

1. designing, planning and coordinating a national development strategy,
2. utilizing procurement to develop specific market sectors, including IT deployment, and
3. participating in joint ventures with the private sector.

The decision regarding what government's role will be is not likely to be made in the near future. The emergence of this issue indicates awareness of the need for structure, another sign of the control stage.

2.2.4 Strategic Planning

Concerns have been raised within the public and private sectors that government policies regarding information are being made on an ad hoc basis both within and across jurisdictions. The use of IT, particularly for databases, has grown tremendously, without strategic perspective or structure. Evidence of a sharper focus on strategic thinking and the need for planning is present.

The importance of strategic planning for information has been recognized by several jurisdictions which have developed or are in the process of developing strategic plans. One of the first of these plans was developed by the Saskatchewan Justice Department. It completed and adopted a strategic plan in 1987 and established their blueprint for the management of information.

An example of a more recent strategic plan is the plan being developed in British Columbia. A document called the *Ministry of the Attorney General Strategy Planning and Change Management Process* has just been completed. This document describes a textbook strategic planning process and represents the first cut at the Province's strategic plan for information technology. It encompasses the considerations and approach that are the foundation of the overall strategy. It does not provide details about the steps that will be taken to meet stated objectives. Having established this structure, the Ministry's next step will be the refinement of this strategic plan to an operational level. (See Appendix A for further description and an outline of this planning document.)

Quebec

The primary objective of the Quebec government's Provincial Policy on Electronic Information is to improve the management of government databases and promote an information economy based on public sector demand for information products. Prior to the development of its strategy encompassing legal information, a working group within the Department of Communications studied the situation, identified issues and developed the following recommendations:

- Develop an overall policy on the production and distribution of government information covering all aspects of production, access, distribution and marketing;
- Develop and distribute appropriate tools to help managers make use of electronic information;
- Ensure an overall coordination of efforts to promote the commercial production of government databases;
- Provide a management training program to explain the challenges involved in database production and distribution and build a new management philosophy based on electronic information and advanced technology.

The Quebec government established a government database developed by the Department of Communications. SOQUIJ was mandated to ensure electronic access to all published and unpublished judgments originating from the Quebec courts and to the Quebec Statutes and Regulations.

Federal Government

The *Information Management Policy* of Treasury Board requires all government departments to prepare comprehensive *Information Management Strategic Plans (SPIM)*. The Department of Justice completed its long range plan and received Treasury Board approval for it in the fall of 1990. The Department of Justice is the first department to receive approval for its *SPIM*. Issues and activities pertaining to the implementation of *Information Management Policy* in the Department of Justice are addressed by this plan.

2.2.5 Cost Recovery

Cost recovery is one of the most pervasive trends evident across Canada. The mandates of many departments are being revised to require the recovery of a portion of their budgets. Public sector development of IT, and of databases specifically, is clearly not the primary impetus for the movement toward cost recovery. Still, the portion of government budgets being directed toward IT is increasing. If cost recovery principles were not being applied to departmental budgets as a whole, it is likely that a similar type of control would be instituted in a more focused manner to IT development.

Cost recovery directives may encourage or hinder the development of databases by government. Departments able to generate revenue from the electronic distribution of their information may be more enthusiastic about database development. Departments lacking experience in database management, either directly or through a distributor, may be less inclined to risk budget dollars on a new venture.

Tighter economic policies of government, including cost recovery, are likely to focus more attention on the economics of database development, both in the materials selected and in the role government will play in the development and distribution process. (See also 6, Economics.)

2.2.6 Other Indicators of the Control Stage

Other indicators of the control stage exist. For example, various organizations are educating government personnel about the licensing and management of databases. And several jurisdictions are spearheading assessments and initiatives regarding skills requirements, organizational structures, training requirements and other organizational issues arising from the expansion of IT.

2.3. MOVING ON

Movement through the Information Technology Development Process is inevitable. When organizations manage the technological and organizational issues arising at each stage, there is less chaos. Their ability to do this is enhanced by an understanding of the overall process. Senior managers who manage the issues that arise at the beginning of each stage assist the organization in moving through the stages with the least conflict. By recognizing this framework for identifying and resolving current issues, senior management utilizes a tool which helps clarify the dynamics of future issues and makes them more predictable and controllable.

Moving on from the control stage, for instance, requires the implementation of sufficient structure so continued expansion is directed and coordinated and institutionalization can take place. The key, at this stage, is the balancing of structure and flexibility.

2.4. SUMMARY

When one looks at issues surrounding public access to information, one realizes the need to look at a larger focus. The development of electronic information is tightly tied to the quantum technological leaps and interwoven organizational issues.

The Information Technology Development Process describes the evolution of information technology within organizations. As the process is iterative, organizations proceed through the stages each time a new generation of IT is introduced. Government as a whole, however, is in the middle of the process, the control stage.

Within the control stage, management recovers from a period of rapid expansion and high cost by implementing some controls. These are evidenced by the beginnings of government policies and questions regarding the appropriate role for government to take, the development of strategic plans and the exploration of cost recovery issues.

These stages are seen generally in the orderly continued development of information technology within an organization or society.

3. INFORMATION TRENDS

- **How fast is the industry growing?**
- **Is electronic information a natural extension of technology?**
- **How can the vast amount of government data best be harnessed? What controls are necessary?**
- **What do users want from electronic information?**

This section discusses the most significant trends affecting the development of legal databases. Awareness of trends is necessary when one is planning for the future. Although trends are presented throughout the paper, key trends are highlighted in this section. Trends in the information industry and in technological development paint a high-level picture of where we are going with respect to the development of government electronic legal information. Focus and detail are added by the inclusion of trends in government, the public and information distributors.

3.1. INFORMATION INDUSTRY

> "Information technology is the engine of growth and change throughout the world: the seed of employment, innovation, investment, opportunity, wealth and individual freedom... In the world trading environment, the best protection for our sovereignty and security is the wise use of information technology."
>
> *Robert A. Ferchat, President, Northern Telecom Canada Limited, Chairman, Information Technology Association of Canada.*

The number of on-line databases worldwide increased 825% between 1980 and 1988, from 400 to 3699. The number of producers grew 626%, from 221 to 1685. The number of on-line service vendors increased 841%, from 59 to 555. It has also been predicted that from 1986 to 1991, the electronic information industry in the United States will grow at a dramatic rate. Sales of on-line interactive information services will grow from $3.7 billion to almost $8.8 billion by 1991. CD-ROM sales will increase from $90 million to $831 million, increasing their share of the electronic information market from 0.2 to 7.4%. On-line broadcast and audiotex systems will increase in volume from $162 million to $856 million.

Few major companies in Canada have shown an interest in establishing or using electronic databases. The federal Department of Communications commissioned a study to determine why the use of electronic information in Canada has lagged behind the U.S. and to identify potential market barriers. The study showed that Canadian firms view electronic information as less valuable than do their American counterparts. They are less willing to pay a premium for on-line information. They are not as aware of the usefulness and potential applications of information services.

Another study, conducted by Evans Research Corporation, reported that foreign vendors supply over half of Canadian demand for electronic information. Users are willing to increase their use of Canadian materials as they become available. The study also projects that total revenues from on-line services will reach $81 million, an annual growth rate of 14%, by 1991.

The Information Technology Association of Canada (ITAC) is composed of hardware and software vendors. In 1989, ITAC prepared a report entitled *The Enabling Effect*. This report discusses the value of information technology and offers measurements which determine the degree to which it is being utilized to extend Canada's economic potential.

The report concludes that "Canada's position in the global economy is increasingly vulnerable", primarily because the importance of information as a critical resource has not been recognized.

Although electronic information is perceived as being less valuable in Canada than in the United States, there are signs that the Canadian perception is changing. Awareness of the need to plan strategically for this resource is increasing. This awareness is fostering strategic plans and operational decisions. In the public sector, most jurisdictions are developing, or planning to develop, databases of their legal information. In nearly all cases, the public sector is considering a role for private sector organizations.

3.2. GOVERNMENT

Information policies from governments at all levels are made with the recognition that freedom of information and privacy issues are of paramount importance. Whether the information is provided electronically or by other media, policies reflecting freedom of information and privacy considerations apply. These policies provide guidance in areas ranging from procedures for the collection of information to the provision of access to information. Freedom of information and privacy have an impact on the major trends in government electronic legal information.

The three major trends in government pertaining to electronic access to information are:

1. the widespread development of databases in almost all jurisdictions,
2. the development of guidelines, policies and initiatives within government to support the dissemination of government information electronically, and
3. the introduction of a user pay philosophy.

3.2.1 Database Development Across Canada

Government databases have been developed or are in the planning stages across Canada. Among the reasons for the tremendous growth of government databases are:

1. advances in technology,
2. the need to improve operational efficiency,
3. the movement toward cost recovery,
4. the recognition of the strategic importance of information, and
5. the movement from restricting access to information that is not confidential toward the sharing of information.

In most jurisdictions, database development is occurring at an operational level. In a few jurisdictions, the development of databases is part of a larger strategic plan for information or information technology. (See 7.6, Examples of Available Databases.)

3.2.2 Government Guidelines, Policies and Initiatives

The Administrative Policy Branch of the Treasury Board of Canada has established a policy regarding the management of federal government information entitled *Management of Government Information Holdings*. The objectives of this policy are to:

1. ensure the cost-effective and coordinated management of federal government information holdings;
2. manage information for the use of financial and other interests of government and the public;
3. organize information for use among government branches;
4. reduce the unnecessary paper burden on the public; and
5. maintain historical information.

It is notable that *MGIH* encompasses electronic information. (See 2.2.2 Development of Policies.)

Other policies relevant to the development of government databases include the *Government Communications Policy* (Chapter 480), which establishes principles for disseminating government information to the public, and the policy on *Increased Ministerial Authority and Accountability (IMAA)*, a step toward decentralizing the management of federal government information. IMAA transfers authority for certain information management decisions from the Treasury Board to the Ministers. (See also 6.2.1, Government Policies.)

The Department of Communications is working to improve the environment for the growth of the Canadian database industry. The Interdepartmental Working Group on Database Industry Support (IWGDIS) and the Canadian Database Promotion Initiative (CDPI) have been established to encourage both private sector initiatives and cooperation among governments, universities and private sector companies.

IWGDIS was formed to address the needs of the federal government and the private sector. In December of 1989, it published a discussion paper whose purpose was "to promote effective and beneficial arrangements for the dissemination of government owned data by private sector vendors" and to "increase awareness of the benefits to be gained from using the services of the information industry." The paper describes considerations about how the federal government can negotiate license agreements. IWGDIS plans to prepare papers on other methods of making government information available.

IWGDIS has organized two colloquia on the licensing of government data to the private sector. The first colloquium was held in June of 1989 for federal government departments. In February of 1990, both the public and private sectors were invited. Attendance at both sessions was considerably larger than the organizers had anticipated, and attendees from the public and private sectors recommended that additional sessions be held.

Also initiated by the Department of Communications, CDPI is being sponsored by the Department of Communications; the Alberta Department of Technology, Research and Telecommunications; Bell Canada; and the Canadian Association of Data, Professional Services and Software Organizations (CADAPSO). CADAPSO is an information industry association whose membership is composed of information providers, software and hardware vendors.

The purpose of the Canadian Database Promotion Initiative is to provide a focal point for awareness and promotional activities, training and education programs, clearinghouse activities, research and networking. Information Group West (IGW), a consulting firm based in Calgary, is conducting a feasibility study to determine methods of developing and promoting the database industry and database awareness in Canada.

In other jurisdictions, governments are establishing initiatives regarding the management of information. For example, Manitoba and Saskatchewan are establishing coordinating bodies to administer government databases. British Columbia is developing a strategic plan for information technology and a technology platform that will, among other things, be a central source for all government information. (See Appendix A - British Columbia Strategic Plan for Information Technology.)

User Pay Policy

Governments are increasingly adopting user pay policies for electronic information products. The underlying rationales for this new approach to the provision of government information vary. The primary reasons are to ensure payment by those who benefit from the government databases rather than payment by the general population. It is also intended to generate revenue. (See 6.1, Government Use of User Fees.)

Comparison — The U.S.

In the US, the Office of Management and Budget (OMB) has established a policy for the management of federal information. This policy covers:

1. access to information,
2. freedom of information,
3. standards,
4. efficiency mechanisms, and
5. guidelines.

The policy prohibits information monopolies and makes all government publications a part of the library system to which access is free of charge. It also notes that private organizations can be more cost effective in disseminating information and encourages government departments to consider both government and private sector involvement in the distribution of information.

Regarding public access to government information, the *U.S. Federal Information Resources Management Act* states that the Administrator responsible for carrying out the provisions of the Act will issue guidance to:

> "(b) strengthen public access to Government information, regardless of format, consistent with existing law including -
>
> (i) making public information products and services available on a timely, equitable and equal basis to all persons; and
>
> (ii) encouraging a diversity of public and private information products and services."

Several associations, including the Information Industry Association and the American Association of Law Librarians have issued policy statements encouraging the widest dissemination of government information. For example, the American Library Association supports the following principles:

- The federal government has an obligation to disseminate government information to the public at a reasonable cost and regardless of its format.
- The public has the right of access to government information. This principle should drive all government information policy goals and objectives.

According to a BNA Special Report entitled, *Federal Information in the Electronic Age: Policy Issues for the 1990s*, a great deal of work has been done to address issues surrounding information policy in the U.S. Some of the basic policy questions that remain partially answered are:

- "What information should the federal government distribute electronically?
- When should the government itself distribute the electronic information, and when should it rely on the private sector?
- Should the government restrict itself to releasing only raw data information and avoid enhancing the data for greater accessibility?
- Should the government make more of its computerized information available through computer-to-computer telephone links?
- How much should the government charge for electronic information, and what provision should be made for those unable to pay for electronic information?"

This report identifies questions likely to be raised in future federal information policy discussions, including:

- "Will agencies choose to rely more on the private sector for dissemination, and how will that affect the costs and accessibility of information?
- Will larger public computer networks be developed as an alternative source of government information?
- Will concerns about unequal access to information prove to be unfounded, or will the development of inequities force efforts to facilitate and subsidize more universal access to computerized information?
- Will government agencies, particularly at the state and local level, continue to see their data as a revenue source?"

Comparison — The European Communities

A key objective of the European Communities' economic strategy is the establishment of an information services market. A key goal is the development of a strong European information industry. To this end, the Commission of the European Communities has prepared guidelines for improving the synergy between the public and private sectors in the information market. "Public administrations regularly and systematically collect basic data and information in the performance of their governmental functions. These collections have value beyond their use by governments, and their wider availability would be beneficial both to the public sector and to private industry." The guidelines go on to say that the public sector should allow the information industry to exploit this material through electronic information services.

3.3. THE PUBLIC

The impact of electronic information services on users will change based on the trends described in the above sections. For example, the increased use of artificial intelligence in electronic information retrieval software will encourage wider use by novice as well as experienced users.

Frequent users of databases are becoming more sophisticated as more electronic information is available to them. They are requiring more sophisticated electronic products and services and prompting the database industry to make advances in response to these requirements. Users are discovering that although the ability to retrieve information electronically is beneficial, most information retrieval systems lack the precision and analysis capabilities they need. Obtaining quantities of information rapidly is just a first step.

The next step involves the merger of the computer's speed with increased applications of artificial intelligence. For example, users are requesting the ability to obtain distillations, analyses, and assessments of the available information and to perform "seamless" searches through several information sources, e.g., to view an annotated statute, move easily into a cited case and then into a treatise on the relevant legal issue.

Lawyers will do more work at work stations, ranging from word processing and scheduling to title searches and research. There is a psychological barrier at present among the more senior members of the legal profession because they are not comfortable using computers. The lawyers who are now starting to practice law are being exposed to the use and benefits of computers. They are therefore likely to use them more, especially as the costs of running a legal practice increase.

It is likely that associations within the legal community and public interest groups will lobby for more electronic information from the government. In addition, a significant increase in information sharing among users can be anticipated.

3.4. INFORMATION DISTRIBUTION

A gradual shift in the information distribution chain is occurring. The traditional distribution chain involves a producer, a publisher, a distributor, an intermediary and, finally, an end user. Technology is presenting the information industry with a new paradigm. Changes to the traditional, paper publishing distribution approach are occurring to reflect this. For example, many databases are integrating vertically so they can perform several of these functions - a form of "one-stop-shopping". This is making the electronic distribution of information more efficient and more appealing to the user.

In response to market demand, the private sector is also developing more value-added services. Value-added services can consist of information, functions, features, related services - in fact, nearly every product or service that will enhance the value of the core service provided.

3.5. SUMMARY

The information industry worldwide is burgeoning, with Canada experiencing significantly less growth as we tend to place lower value on electronic information. This attitude may damage us in the global economy. However, signs of change are appearing as long range plans begin to include information technology and electronic information distribution.

Government is participating in the growth of electronic dissemination by implementing automation plans to improve internal government work processes. An issue of concern is how to pay for the private sector need for and use of data. Governmental policies and initiatives are beginning to establish a framework for dealing with such issues, ranging from user fees to licensing arrangements to increasing the value of data.

Lastly, the public wants electronic information to provide answers, not just information. Only after technology improves will users increase their commitment to electronic information. Private sector participants are beginning to respond to those market needs.

4. OWNERSHIP

- **Does the Crown hold copyright to all documents produced by its employees?**
- **What is the effect of Crown copyright on electronic distribution of legal information?**
- **What has been the debate about the *Copyright Act*?**
- **Is the *Copyright Act* likely to be changed?**

This section of the paper contains a discussion of the ownership of government information and the activities that have taken place over the past few years regarding the *Copyright Act*. It discusses the two bases of Crown copyright, the *Copyright Act* and Crown prerogative, also called royal prerogative. It also contains a summary of copyright law.

The *Copyright Act* says that the author of a protected work is its copyright owner and, as such, has several rights, including the exclusive right to produce or reproduce it. The *Act* also says that copyright vests in the Crown if the work is prepared or published by or under the direction or control of the Crown or government department. Although there is disagreement over copyright coverage, it is generally held that the Crown holds copyright in statutes, regulations and judicial decisions.

During the past few years, recommendations have been made that the *Copyright Act* be amended, and in 1988 revisions were made for the first time in over 60 years. Calls for further amendments have been made, including the request that statutes, regulations and judicial opinions of courts and tribunals across Canada be placed in the public domain.

As the government-initiated consultations regarding the *Copyright Act* are taking place, other relevant events are occurring. Most jurisdictions are in the process of automation. Technological advances have made the development of databases easier and less expensive. There is a trend toward cost recovery within the government. These events add to the complexity and importance of the ownership issues.

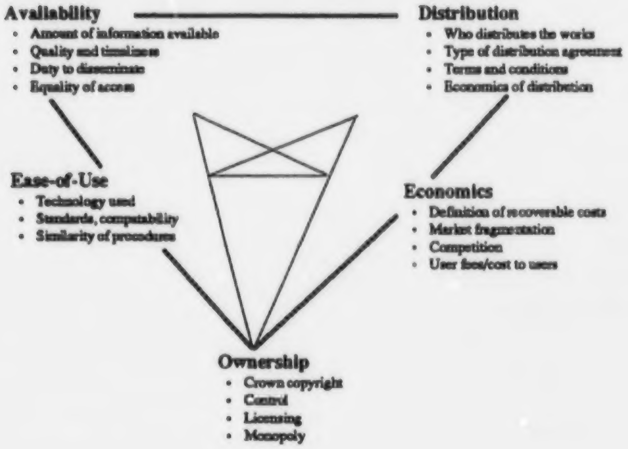
4.1. SIGNIFICANCE OF THE ISSUE

The significance of the Crown copyright question is that it determines ownership. With ownership flows rights and responsibilities. The copyright owner has the exclusive right to permit or refuse to permit the publication, reproduction, adaptation, performance in public or communication to the public of works encompassed by Crown copyright. The copyright owner also has the right to make legal information available to the public and perhaps earn revenue while doing so. The copyright owner has the responsibility to ensure the accuracy and proper management of the information owned. The copyright owner has the right and responsibility to decide such questions as:

- Is Crown copyright needed to ensure the quality, reliability and credibility of protected works?
- Who should control the copyright?
- Who will have access to these materials?
- Will fees be charged for access to these materials, and if so, to whom and in what amount?

Ownership of legal works is an issue of considerable concern to the judiciary, legal publishers, lawyers, librarians and governments. It has a significant impact on many of the other issues presented in this paper. The diagram below shows some of the issues affected by the ownership question.

Issues Related to Ownership


Availability
• Amount of information available
• Quality and timeliness
• Duty to disseminate
• Equality of access
Distribution
• Who distributes the works
• Type of distribution agreement
• Terms and conditions
• Economics of distribution
Ease-of-Use
• Technology used
• Standards, compatability
• Similarity of procedures
Economics
• Definition of recoverable costs
• Market fragmentation
• Competition
• User fees/cost to users
Ownership
• Crown copyright
• Control
• Licensing
• Monopoly

4.2. PERSPECTIVES ON OWNERSHIP

The impetus for *Copyright Act* amendments has highlighted the lack of consensus among and within the federal and provincial governments, the legal publishers and the users of statutes, regulations and cases about the ownership of that information.

4.2.1 Does Crown copyright Apply to Primary Legal Materials?

Although it appears there is agreement that statutes and regulations are subject to Crown copyright, no consensus exists regarding the applicability of Crown copyright to judicial decisions. One perspective is that judges are servants of the Crown under a contract of service. The decisions are prepared and made in the course of their employment. Therefore, the Crown has the right to the copyright in any reasons for judgment.

Another perspective is that copyright in the reasons for judgments is vested in the provinces because the administration of justice is under the control of the provinces. For example, the Law Society of Upper Canada has taken the position that copyright is vested in the province of Ontario. The province has delegated this right to the Law Society through the *Law Society Act* which gives it responsibility for reporting and publishing the decisions of the courts. Therefore, the Law Society of Upper Canada derives copyright from delegation by the province and from statutes.

An extension of this perspective is that the copyright owner can enter into contractual arrangements with publishers or distributors. People holding this view believe that entering into contracts gives the copyright owner additional contractual rights, thereby increasing its control. These contractual rights may expand the depth or specificity of the existing rights or they may expand the scope of those rights. It should be noted that the Law Society of Upper Canada is not asserting additional contractual rights over the Ontario reasons for judgment.

Another perspective is that the federal government owns copyright in judgments because of the Crown's prerogative powers. Held exclusively by the Crown, these powers include the right to publish certain types of works. Crown prerogative rights have not been clearly defined, so their applicability to reasons for judgment or to databases containing them is unsettled. (See 4.4 Copyright Law - A Summary.)

Yet another perspective is that government does not hold copyright in judicial decisions. The judiciary is an independent branch of government. Judges are not servants of the Crown. In addition, the administration of justice in Canada is a public matter, and the Canadian public is entitled to unrestricted access to judicial decisions. It is inappropriate to consider that anyone, including government, could have a monopoly to control the dissemination of reasons for judgment.

Whether there is copyright in reasons for judgment is not clear. If reasons for judgment are subject to copyright, the question of ownership of the copyright remains disputed. And if control of copyrighted materials can be delegated, then another issue arises. Can ownership of materials subject to copyright and control over those materials be held independently?

Crown copyright over primary source legal information is a contentious area. This paper does not pretend to provide a full statement of the issues or of the positions of those involved in the debate. For example, if judicial opinions are edited, is the resulting material subject to copyright. Also, who owns the copyright and, therefore, controls the materials if retrospective materials are available only in their edited form.

Although the legal issues surrounding the basis for ownership of copyright in judgments, statutes and regulations are significant, the larger policy issue is whether these materials should be subject to copyright.

4.2.2 Should Crown copyright Apply to Primary Legal Materials?

Although there are questions as to the coverage of Crown copyright, the focus of the issue is not on its present applicability to one type of source material rather than another. The debate concerns whether Crown copyright should be retained or released by government for all primary legal materials.

At one end of the spectrum, the view is that ownership rests with the Crown in works created by government employees in the performance of their duties and in works prepared or published by or under the direction and control of Her Majesty or any government department. These materials include statutes, regulations and judicial opinions. Crown copyright exists for a variety of reasons, including the need for control over access, economics and the quality of the data. Government has a responsibility to ensure that works created by public servants are managed properly. In addition, government is accountable to the people and must protect the public interest. Ownership by the Crown is in reality ownership by the people. Taxpayers expect that governments will be good stewards of public funds. Good management of these resources requires control over them.

Most people stating that ownership rests with the Crown made a point of emphasizing the importance of ensuring public access to legal information. Their argument is that Crown copyright should be supported as long as public access to legal information is not restricted. As long as the Crown is merely asserting control over what is done commercially with this information and public access is not being restricted, they believe Crown copyright is not a significant issue.

At the opposite end of the spectrum is the position that, as a matter of public policy, the law should be in the public domain. The law derives its authority from the consent of the public. Therefore, the public is entitled to access to the law it has authorized. Further, the public is obligated to know the law. If that obligation is to continue, the public should have ready access to the law that governs them. Removing statutes and judicial decisions from copyright protection is the best means of ensuring the widest possible dissemination with the fewest delays. Copyright over judicial decisions would enable each government to restrict the dissemination of judicial opinions, including those dealing with matters affecting the Crown. Access to this information is crucial in a democracy and should not be restricted.

The Canadian Association of Law Libraries/Association canadienne des bibliotheques de droit (CALL/ACBD) is an outspoken advocate of this public domain perspective. CALL/ACBD's position is that there should be no copyright in government works with the following exceptions:

a. "a moral right of integrity to ensure the accuracy in the nature of standards should be provided;
b. works produced by a Crown agency, such as the Canadian Broadcasting Corporation or the National Film Board, the purpose of which is to entertain rather than to assist in policy debate and evaluation, should be protected; and
c. custom-made statistics and statistical works in restricted circulation should be protected if it is found desirable to continue the practice of making these works available to particular users on a cost-recovery basis."

According to the public domain perspective, the greatest value to the public results from the widest possible dissemination of legal information. Restricting dissemination is not in the public interest. Government control over this information is not necessary because only those distributors who provide accurate and timely access to legal information at a cost seen as reasonable by its buyers will survive.

4.2.3 The Need for Clear Policies

Clear policies concerning copyright of legal works are needed. That message was consistent throughout the information gathering phase of this study. These issues have been debated at great length and considerable cost for many years. Governments, industry and the public will benefit from their resolution. As the *Copyright Act* is under review at present, this is an opportune time to address this matter.

It should be noted that rescinding section 12 of the *Copyright Act* will not create certainty about the coverage of copyright over legal materials. The Crown could assert copyright in works created for it under section 13 of the *Act* or by Crown prerogative. The clear placement of statutes, regulations and judicial opinions in the public domain, would require the addition of a section to the *Copyright Act* and the passage of a statute.

4.3. AMENDING THE *COPYRIGHT ACT*

A considerable amount of activity has taken place since 1984 regarding the *Copyright Act*. This activity has been initiated by both the public and private sectors and has centred around revision of the *Act*. Revising the *Act*, however, is complex because no single department controls the issues surrounding copyright. For example, the Minister of Consumer and Corporate Affairs is responsible for administration of the *Act*. Reforms to the *Act* are being conducted by the Minister of Communications. The Minister of Supply and Services is responsible for the granting of licenses pertaining to copyright protected works. The Treasury Board is responsible for funding and for rules and regulations concerning how the government handles itself. And the Department of Industry, Science and Technology provides support to industries. Despite the difficulties of ensuring coordination among the various departments, changes have been made.

4.3.1 Chronology of the Debate

Since 1984, the major government activities relating to revision of the *Copyright Act* are:

- In 1984, the government published the white paper *From Gutenberg to Telidon*. This paper outlined proposals for the revision of the *Copyright Act*.
- In 1985, the House of Commons Subcommittee of the Standing Committee on Communications and Culture submitted a report entitled *A Charter of Rights for Creators*. In this report, the Subcommittee made 137 recommendations, one of which was that "Statutes, regulations and judicial decisions of courts and tribunals at all levels of jurisdiction should be in the public domain."
- In February of 1986, the government issued a report entitled *Government Response to the Report of the Sub-Committee on the Revision of Copyright* which agreed in principle that statutes, regulations and judicial decisions should be in the public domain. The report stated that the federal government had begun consultations on this subject with the provincial governments.

- Informal consultations including the departments of communications of the various jurisdictions were held. A number of revisions were recommended, including the elimination of Crown copyright, the removal of telecommunications barriers to database use and the provision of better natural language interfaces. The resulting recommendation was that the status quo be maintained. Because so much time had passed since the consultations began, the Deputy Minister of Communications requested a second round of consultations, this time with the Justice departments.
- In June, 1988, the *Copyright Act* was amended for the first time since 1924. The amendments were so extensive that it was decided to proceed in phases. The 1988 amendments dealt with computer programs, piracy, the relationship between copyright and industrial design, the establishment of a copyright board, the collective management of copyright, the expansion of moral rights, protection for choreographic works, the abolition of mechanical reproduction licenses and rights covering the exhibition of works of art in public. The next phase of amendments are expected to be tabled during 1991.
- At a federal/provincial meeting of deputy ministers of Justice, it was decided that a formal consultation process regarding Crown copyright in statutes, regulations and judicial decisions would be initiated. In May of 1990, the Deputy Minister of Justice for the federal government sent a letter to the provincial and territorial deputy ministers of Justice and deputy attorneys general. This letter said that the government is preparing the next phase of the revisions of the *Copyright Act*. It said that representations had been made to the Department of Communications to the effect that the Crown should give up its copyright in statutes, regulations and judicial decisions and leave them in the public domain. The letter requested the points of view of the provincial justice ministers on this issue.

The federal Deputy Minister of Justice has received responses from most of the other jurisdictions on this issue. Consultations will be held among the deputy ministers of Justice and deputy attorneys general. The federal Deputy Minister of Justice will consider the positions of the other jurisdictions when making his recommendations to the federal departments of Communications and of Consumer and Corporate Affairs. The federal Department of Communications and Department of Consumer and Corporate Affairs will make recommendations to the Cabinet.

In 1986, the Cabinet stated that the Crown would retain copyright over government works, and it is unlikely that the Cabinet will reverse this decision. Regardless of the outcome, none of the jurisdictions are prevented from authorizing any use of the works of their governments.

4.4. COPYRIGHT LAW — A SUMMARY

Copyright is the sole right to produce, reproduce, publish or adapt a work or any substantial part of a work in any material form, i.e., regardless of the medium used. It also encompasses the right to allow others to perform these activities. It generally runs for the life of an author plus 50 years. Copyright is infringed when someone other than the copyright owner does something to or with the work, without the consent of the owner, which only the copyright owner has the right to do or authorize.

To be the subject of copyright protection in Canada, a work must be of a type enumerated in the *Copyright Act*. It must also be original, fixed in a material form, and must relate to the expression of an idea or information. Although some people disagree, the general consensus is that the materials contained in databases are subject to copyright.

The author of the work is usually the first owner of copyright. The author can relinquish ownership or agree that someone else owns the copyright. This happens most often when employees create a work in the performance of their duties. Subsection 13(3) of the *Copyright Act* applies this principal to government which owns the copyright in works produced by its employees in the course of their employment. The author/owner also has moral rights to the work which run for the life of the author plus fifty years. Moral rights include the right to the integrity of the work, the right, where reasonable in the circumstances, to be associated with the work as its author, and the right to remain anonymous. Even if copyright is assigned, moral rights stay with the author unless that person waives them.

In Canada, copyright automatically exists upon creation of an original work if the creator is a Canadian citizen or resident or is otherwise qualified under the *Copyright Act*.

Crown copyright is described in section 12 of the *Copyright Act*. It was taken from the UK Imperial *Copyright Act, 1911*. Section 12 says that where a work is prepared by or under the direction or control of the Crown or government department, copyright immediately vests in the Crown where it remains until publication and for 50 years more. Where a work is independently prepared but later published by or under the direction or control of the Crown or government department, copyright remains with the author until publication. Publication by the government immediately transfers copyright to the government for 50 years. Although the applicability of section 12 to the provinces is in question, the provinces can still claim copyright over protected works through Crown prerogative.

Crown "prerogative" describes certain powers, rights, immunities and privileges necessary to the maintenance of government. These powers are unique to the Crown at both the federal and provincial levels. Among them are the exclusive right of the federal and provincial governments to print certain types of works. The goal of Crown prerogative is to ensure the quality, accuracy and credibility of the information. The works encompassed by the royal prerogative power are not well defined and may or may not cover databases. Although the Crown prerogative copyright has been cited in many judicial opinions, it has not been judicially tested, so its nature and extent are not certain. It is known, however, that this exclusive right to certain works by prerogative amounts to a perpetual term of copyright protection.

4.5. INFRINGEMENT

Infringement occurs when someone other than the copyright owner does something without the owner's consent that only the owner has a right to do. Reproducing, adapting and publishing the work are the most common types of copyright infringement. Only the owner or exclusive licensee may bring action for infringement of the copyright for their works.

4.5.1 Enforcement

People within government pointed out that enforcement of these provisions is very difficult. At present, people occasionally tell the government when they encounter a violation. The more obvious cases may be noticed, for example when a publisher reproduces material protected by copyright. In the recent past, at least two lawsuits were filed for gross violations of the *Copyright Act*. These actions raised the level of cognizance about the issue and were effective in curbing activities in contravention of the *Act*.

The penalty for copyright infringement is significant. The maximum penalty for infringement is one million dollars and five years in prison. The owner has a number of remedies, including: 1) injunctive relief, 2) compensatory damages, 3) loss of profits and possibly 4) punitive or exemplary damages.

4.5.2 Fair Dealing

Fair dealing is a permissible form of defence in an infringement case. Fair dealing encompasses use of copyright protected materials for the authorized purposes of private study, research, criticism, review or newspaper summary. The *Copyright Act* does not define what fair dealing means, leaving this up to the particular circumstances and individual judgment of what may be fair. The *Copyright Act* also leaves open the question of the extent copied and the number of copies an individual may take for private study, research, criticism, review or newspaper summary.

There is another undefined concept in the *Copyright Act*. There can be no infringement unless a substantial part or the whole is copied. However, case law has established that "substantial" means significance of contents as well as extent of an extract.

Librarians may become involved in copyright disputes even though they acted in good faith in the performance of their duties. They want to perform their jobs without the concern that they will be unknowingly violating the law or stepping into a time-consuming bureaucratic process.

CALL/ACBD has several concerns about the *Copyright Act* and has recommended the following revisions:

1. To permit Libraries to make one copy, from time to time, provided that only one such copy is in existence at any given time, of a damaged, deteriorating or destroyed work only if same is not available to that Library at a reasonable price and within a reasonable time period.

2. To permit Libraries to make one copy, from time to time, provided that only one such copy is in existence at any given time, of a special work whereby reason of its fragility or rarity it is not appropriate to put such work at the disposition of the public.

3. To permit Libraries to make one copy, from time to time, provided that only one such copy is in existence at any given time of an out-of-print work.

4. To protect Libraries from any legal liability when patrons make copyright infringing copies on self-service photocopy machines located on Library premises, provided the Library has posted a copyright warning near the machine.

5. To permit Libraries to use the "fair dealing" exception when copying works on behalf of patrons where that exception would apply if the patrons made the copies.

6. To limit the liability of Libraries to what they would have had to pay if the rate charged by a collective had applied where the Library copies works not accessible through a collective.

7. To permit Library patrons to make a single copy of a periodical article for purposes of private study or scientific, technical or scholarly research.

8. To permit Libraries to make a single copy of a periodical article for a person who provides the librarian with a written statement satisfying the librarian that the copy is required for purposes of private study of scientific, technical or scholarly research.

4.6. SUMMARY

The *Copyright Act* is being criticized, examined and revised. Crown copyright is a looming emotional issue revolving primarily on control. Disagreement and discussion abound regarding the reality and impact of Crown copyright on primary legal materials. Although consultations are being held and revisions will be made to the *Copyright Act*, it is likely that statutes, regulations and judgments will not be excluded from coverage. It is also likely that each jurisdiction will determine its own policies regarding access to those materials.

5. DISTRIBUTION

- **What development and distribution issues need to be resolved? How is the private sector involved?**
- **When and how should government go about licensing data to the private sector?**
- **Do license agreements ensure control over the data?**
- **What concerns does a private sector distributor have about licensing government data?**

This section discusses the roles available to the public and private sectors for developing and distributing government databases and the issues surrounding the alternatives. The predominant type of arrangement is distribution by a private sector organization through a license agreement. Examples of such arrangements are included.

Throughout this chapter and later in this document the phrase "electronic publishing" is used. This phrase is controversial, and the issues surrounding its use are being debated. For example, does the distribution of information exclusively in electronic form constitute publishing? If an organization puts information into the public realm does this mean that this information has been published? What are the copyright ramifications? How does this affect public access to this information? The phrase electronic publishing may be replaced by a phrase that is less contentious and the issues its coinage has raised may be resolved. Its use in this document does not reflect a position on these issues. Rather, it is used because it is, at present, widely used and commonly understood.

The licensing of government information for electronic distribution is increasing. Barriers are being removed as information about license negotiations and terms of the agreements are shared. The types of licenses, elements of a license agreement and obstacles to anticipate when entering into license negotiations are also discussed in this section.

5.1. DISTRIBUTION MODES

Most jurisdictions are considering the involvement of the private sector in their electronic information distribution projects. Government can deliver copies of the material to a private sector organization that will develop the database system and distribute the material. Typically, the systems being developed are part of a larger office automation effort in which access to the database is merely one component. External access to an on-line database can be provided through the government system or through a vendor. Original design of the database system, policy, cost and administration are some of the factors that determine which approach the department will take.

5.1.1 Development and Distribution

The two major areas in which private sector involvement is being used or considered are database development and distribution. As both are part of an overall process, steps that some organizations might consider to be development, others assume to be distribution. Generally, development is the process by which:

- a technological platform is established,
- the functional requirements of the system are determined,
- the search and retrieval software is selected or created, and
- the material is prepared for electronic access.

Distribution is the process by which the material is disseminated to users. Marketing, sales, training and customer support are part of the distribution process.

Development of the databases requires specific technical expertise which, in most cases, is more readily available in the private sector. Most governments have used or plan to use outside expertise in conjunction with their own in-house experts to select hardware, to install, modify or create search and retrieval software, and to identify and incorporate requirements concerning the number of simultaneous users, telecommunications and growth. For example, in 1990 the Federal Court of Canada signed an agreement with SHL Systemhouse Inc., of Ottawa, to develop a $2.2 million proceedings management system which will track and control cases and appeals filed with the court.

Technical expertise by itself is insufficient to develop an electronic information system. The implementation of such a system also requires the involvement of people who know what the database contains, who will use it, how they will use it, how frequently it will be used and similar functional information. Government, with input from users, can provide this expertise.

Distribution of the database can, and in most instances is likely to, involve similar cooperation between government and private sector organizations. The primary difference between external developers and distributors is the longevity of the relationship. Governments generally employ external technical experts or developers to complete the development stage of the project.

Once the database system is operating successfully, the developers may be called in on a periodic basis, but the department assumes responsibility for ongoing maintenance of the system.

Distributors, on the other hand, work with the provider of the materials on a long-term basis. Their relationship is similar to a joint venture or partnership. Because of the special nature of this relationship and the public access issues surrounding it, the emphasis in this paper is on distribution rather than development.

5.1.2 Government Distribution

Some departments are considering using direct in-house services to provide access to the databases. It is not the favoured alternative in Canada. CD ROM is being considered more strongly than on-line for direct distribution of legal information.

The Ontario government is considering direct distribution of its statutes and regulations on CD-ROM. Distribution is targeted for the spring of 1991. The text of the statutes and regulations will be available in French and English. The materials will be updated twice each year. The software will enable searching with strings and proximity connectors. Any word in the text of the documents will be searchable. The planners want to include two levels of searching, one level for new and one level for experienced users. They also want to include documentation or manuals to assist users. CD-ROM was selected as the distribution medium because:

- Government wants control over the system and believes it would not have adequate control with a mainframe supplier;
- CD-ROM is portable;
- It answers the real needs of the legal profession;
- It provides low cost searching; and
- The technology is now available. Government plans to build in the pyrotechnics to provide the laws of Ontario to people who might not otherwise have access, e.g., printing to braille readers and providing audio sources.

The Commission of the European Communities recommends regular, close scrutiny when direct distribution is chosen:

> "Electronic information services directly supplied by the public sector should be regularly reviewed, with a view to deciding whether their provision by the public or private sector is most appropriate, or

> whether the involvement of the private sector in their production or distribution, or their replacement by appropriate commercial services is desirable."

5.1.3 Private Sector Distribution

Private sector distribution, through service contracts or license agreements, is the structure being used and considered most frequently at present. Some examples of private sector distribution are included below. A table identifying databases containing statutes and regulations by jurisdiction is included in Appendix B.

New Brunswick

The government of New Brunswick has a database system on which it maintains the English and French statutes for internal, on-line searching. This system restricts searching to one statute at a time. QL Systems provides full statute searching of the New Brunswick English statutes to the government and the public. QL charges the same rates to both user groups. The government is considering distribution of the statutes and regulations by CD-ROM.

Alberta

The government developed a database of statutes and regulations for internal searching more than a decade ago. The government maintains this database for internal searching and to provide QL Systems magnetic tapes for on-line distribution to the public. QL also distributes a database of the Labour Relations Board of Alberta decisions. The Alberta government is also considering the use of CD-ROM for dissemination of its statutes and regulations.

Quebec

All of the revised statutes and regulations of Quebec are on a database which is disseminated internally through the Ministry of Justice and externally through SOQUIJ, a Crown corporation. SOQUIJ is also mandated to ensure access to all published and unpublished judgments emanating from the Quebec courts. In addition, SOQUIJ distributes registry information and judicial procedures. Two other provinces are investigating the possibility of setting up corporations similar to SOQUIJ for the development and distribution of similar databases.

Manitoba

Statutes, land titles, personal registry, corporations branch, mining claims and some Queen's Bench information are available on-line through Manitoba Data Services. Manitoba Data Services was a Crown corporation that evolved from the government's data processing department. Primarily a large mainframe services organization or computing utility, it provides data processing services to most departments in Manitoba. It was initially developed to provide over-the-counter searches on registry information. In August of 1990, Manitoba Data Services was purchased by STM as a wholly owned subsidiary. Because it is the only example of a Crown corporation distributor that has been sold to the private sector, other jurisdictions are likely to monitor the developments of Manitoba Data Services closely.

Federal Government

The Department of Justice has a service contract with QL Systems to provide the *Revised Statutes of Canada* on-line. The contract states that the Crown retains copyright and grants to QL a non-exclusive right to distribute the database. The Department of Justice pays full commercial rates for use of the service. In exchange for its use of the RSC data, QL Systems credits Justice for its use of this database.

5.1.4 Electronic Distribution of Judgments Study

In 1989/90, Robert T. Franson and Susan J. Lyons did a study for the Canadian Legal Information Centre. This study, the *Electronic Distribution of Judgments*, examines the current process encompassing creation through distribution of judgments. The purpose of the study is to determine whether electronic distribution by the courts could provide more effective access to the judgments. In light of the comprehensiveness and utility of this study and in the interest of avoiding duplication, information contained in that study is not included in this paper.

For a copy of the study, contact the Canadian Legal Information Centre.

5.2. LICENSING THE DATA

The number of people with experience in licensing data to the private sector is small but growing. Groups like IWGDIS are providing focus and forum for the discussion of issues, the development of standards and the exchange of ideas. In the federal government, the growing number of policies and acts relevant to database licensing demonstrate increased awareness and interest. Some of the Treasury Board policies and federal acts which apply are:

- *Access to Information and Privacy Act*;
- *Conflict of Interest and Post-Employment Code*;
- *Copyright Act*;
- *Financial Administration Act*;
- *Government Communications Policy*;
- *Publishing Guidelines (Chapter 480)*;

- *Management of Government Information Holdings Policy*;
- *Official Languages Act*;
- *Policy on Publishing (under review; to be released during 1991)*;
- *Research and Development Contract Policy*;
- *TB Circular, External User Fees and Charges for Goods, Services, Property, Rights and Privileges*;

IWGDIS has prepared guidelines regarding the licensing of government information and a checklist of items that should be covered by a license agreement. The Canada Communications Group - Publishing (CCG - P) has a standard license agreement used as the basis for discussions with potential licensors. The majority of jurisdictions have or are in the process of discussing distribution with the private sector.

5.2.1 Types of Licenses

There are three types of licenses:

1. A non-exclusive license is one which is granted to more than one Licensee, and the right to access or distribution is retained by the Licensor.
2. A sole license permits the Licensor to reserve its own right to distribute and gain access to its database but undertakes not to issue a license to any person other than the original Licensee.
3. An exclusive license grants to the Licensee the exclusive right to gain access to and use the Licensor's database. This type of license bars the Licensor from gaining access to or using the database except by specific agreement with the Licensee.

According to the Department of Justice, exclusive licenses issued by the Crown are tantamount to an assignment of copyright. Therefore, an Order-in-Council is required under the *Financial Administration Act* for the issuance of this type of license.

5.2.2 Elements of a License Agreement

To assist federal departments in the licensing of databases, IWGDIS prepared the following list of elements which may be found in a license agreement.

1. definition of terms,
2. description of the relevant database,

3. identification of the parties involved,
4. roles and responsibilities of each party, including internal roles of the federal institution, roles of the federal institution towards the licensee and roles of the licensee towards the federal institution,
5. period covered by license and data delivery date,
6. quality control and monitoring of data,
7. management of the license,
8. changes and updates to the database by the federal institution,
9. forms of delivery of data,
10. changes to the established license agreement,
11. defaulting of the agreement,
12. expiration, extension, renewal and termination of agreement,
13. financial arrangements: capital investment, maintenance costs, royalties, fees and special charges.

IWGDIS has pointed out that each license agreement is different, and obtaining legal advice before entering into one of these agreements is important.

5.2.3 Obtaining a Federal Government License

Federal departments can license data directly if no fee or royalty is involved in the agreement. If fees or royalties are included, federal departments must obtain Treasury Board approval regarding the rates. They must then obtain an Order-in-Council from Cabinet. Alternatively, the Canada Communications Group - Publishing has blanket authority to issue license agreements for federal institutions. CCG - P currently has the same number of licenses for electronic distribution as it has for hard copy distribution.

CCG - P has entered into license agreements initiated both internally and by the private sector. When a government department has notified CCG - P of an opportunity, CCG - P then issues Letters of Interest, to which it requests vendor response. For example, the Department of Fisheries and Oceans wanted to automate and produce an electronic product. CCG - P sent a Letter of Interest and received a strong response from the private sector. The result was WAVES, a database of Department of Fisheries and Oceans information in CD-ROM format. WAVES has been documented as a business case for other departments' reference. CCG - P has also received unsolicited proposals from the private sector.

CCG - P is using a standard agreement which reflects the license agreement elements as recommended by IWGDIS. CCG - P's standard agreement also addresses some of the obstacles which have prevented the private sector from pursuing government licenses more enthusiastically. The Director of the Canada Communications Group - Publishing emphasizes that the key to successful licensing agreements is the understanding and recognition of the needs of both parties within the existing situation. Although CCG - P offers a standard agreement, they encourage negotiations and modifications where appropriate.

5.2.4 Pros and Cons of Each Distribution Mode

The primary advantage of direct distribution by government is government's increased control over the entire process. The department can be sure that timetables, accuracy targets and other requirements will be met. Distribution by the private sector, on the other hand, is advantageous because specialization means lower costs. It is generally more cost-effective for an organization that specializes in the distribution of information to perform this function than for one whose primary mandate does not involve electronic dissemination of information.

Licensing the material to an experienced distributor is much more prevalent than direct government distribution. At a database colloquium for federal government personnel, the chair of IWGDIS said that increased dissemination of government information both within the government and to the public through the private sector can:

1. "benefit departmental operations by:
    - increasing productivity
    - reducing costs
    - improving service to the public
    - allowing better management of information holdings;
2. assist the development of a more viable, competitive Canadian industry;
3. enhance access by all Canadians to essential information on the government, the economy and Canadian society as the administration of government becomes more challenging in a time of technological change and fiscal restraint;
4. ensure access to government information by industry wishing to provide value added information services."

Not only do these points demonstrate short term benefits to government, vendors and the public, but they also show an awareness of the overall and long term value of government information.

5.2.5 Factors Regarding the Distribution Decision

When exploring the issue of direct versus indirect distribution, three major factors should be considered: control, expertise and economics.

Control

The types of control most important to departments entering into license agreements concern compliance with government policies and acts and the accuracy and timeliness of the publication. The legislative framework regarding the licensing of federal government information consists of the *Copyright Act*, the *Financial Administration Act (FAA)* and the *Official Languages Act*. The Interdepartmental Working Group on Database Industry Support has prepared discussion papers, participated in at least one symposium and one colloquium and designed a checklist to assist federal institutions in developing license agreements.

The Canada Communications Group - Publishing has prepared standard licensing terms and conditions and a sample business case. It has also begun educational work with other departments who request information about licensing.

The license agreement is the vehicle by which control over the accuracy and timeliness of the information can be maintained. CCG - P's standard agreement includes several provisions to this effect. One provision accomplishes quality control by giving government the right to:

1. review work-in-progress and the premises in which this work is being carried out,
2. observe and review qualification tests, and
3. make any appropriate inspections and tests of the work.

Assuming that both parties understand the importance of quality and timeliness, they can jointly determine the most effective and efficient testing procedures and practices during the negotiations.

Another provision requires the review and correction of page proofs within seven days of submission by the licensee. The review is an important aspect of quality control. If the Author Department fails to complete this process within the established time frame, the proofs are deemed accepted. This time restriction is often critical to the distributor whose product is time-sensitive and whose value in the marketplace can be greatly reduced by delays in distribution.

Government's interest in maintaining control over the information and the process of development and distribution is understandable. Their interest must be balanced with the vendor's need to distribute a commercially viable product. Departments can achieve both objectives without imposing conditions that limit business opportunities. The parties can discuss the issues and approaches during negotiations and incorporate relevant terms and conditions into the license agreements.

Expertise

Technical, electronic publishing and marketing/support expertise are needed for the effective distribution of government information.

Technical expertise is needed for development of a system to ensure ongoing adaptation to the quickly changing technological environment. One government department pointed out that enthusiasm for their internal database system was so great that it became difficult to manage the feature additions, modifications and improvements requested by users. What began as a small, straightforward project quickly exceeded the available technical expertise. Typically, database systems are not static. They grow and change because of both user demands and advances in technology. The technical expertise needed to maintain them is often underrated.

Expertise in electronic publishing includes product development, market requirements and pricing. Development of a product that will be embraced and therefore used by the marketplace requires experience, regular and ongoing interaction with users, and an understanding of the product itself. One must have a sense of the interplay between product and user. The types of considerations that will impact product development are:

- who will use the product?
- how will the product be used?
- for what purposes will it be used?
- under which circumstances will it be used?
- what will be the role of this tool in relationship to the other tools available to the user?

Expertise in marketing and selling the product and in training and supporting the users is also essential. Decisions need to be made regarding:

1. whether the product should be targeted at a specific user group,
2. how the group should be made aware of its existence,
3. what type of training will result in acceptance and use of the product, and

4. what type and extent of support will be provided.

Experience in these areas have a significant impact on whether the database is used and with what level of satisfaction and benefit.

Economics

In a study entitled *Publishing Government Information in Electronic Form*, InfoGen, a consulting organization located in Gloucester, Ontario, identified several important issues in the promotion of private sector distribution of federal government information. The most important issue is the financial system by which most departments are run.

> "For many departments, revenues from electronic publishing flow back not to the department, but to the government's consolidated revenue fund. In this situation, departments have a *disincentive* to engage in revenue-generating electronic publishing, and are effectively discouraged from developing realistic business plans for productive electronic publishing."

To retain their current funding levels, most departments must generate sufficient revenue to recover an established portion of their costs. If, on the other hand, a department exceeds its revenue objectives or generates a budgetary surplus, it must forfeit the excess revenue. Departments are encouraged to manage very closely to both their revenue and expense budgets. They are discouraged from exceeding revenue goals or minimizing expenses. The effect on database distribution is that departments subject to this type of financial policy are not motivated to assist distributors in the development of a successful database service. Such assistance is a drain on the department's resources without a corresponding compensation.

Cost of Upgrades

Another economic issue to consider is the inevitable need for upgrades and enhancements to database systems. Although time frames for these upgrades can vary dramatically, every database system requires them periodically. These periodic costs must be included in the budget as a matter of course. Database providers must build into their budgets sufficient flexibility to allow for upgrades and enhancements. Start-up costs can be wasted if the system cannot be properly maintained. Plans must encompass upgrades and enhancements, reorganizations, adverse budget revisions and ongoing funding.

Cost to the Public

The cost to the public is another factor to be considered. Will there be a significant difference in the cost to the public if the information is distributed by the government as compared to the private sector? In many cases, a vendor will incorporate value-added features and services to the product for which recovery of costs will be expected. Most users of database services are receptive to value-added features and services and are willing to pay for them. The question then becomes whether the value added justifies the additional cost.

Cost to Distributor

From the distributor's viewpoint, there are other key economic concerns. These concerns have to do with the costs and risks associated with attempting to obtain a government license for the distribution of information and the costs associated with the variance in approach between the public and private sectors.

Becoming a licensee of the government can be risky and costly. A vendor who approaches the government with a concept for a new product may spend a great deal of time and expense developing the concept and the business case and finally presenting these to the government. Typically, the next step in the process has been the issuance of a *Request For Proposal*. Although the original vendor developed a proprietary idea, the vendor is not protected. Another vendor may be selected to implement it. This process has dissuaded some vendors from approaching the federal government with their ideas. CCG - P has recognized the obstacle this poses. Vendors working with CCG - P are no longer required to go through the competitive process unless the government has already initiated the idea for that material.

Private sector distributors of electronic information are attuned to the rapid pace with which market requirements surface, the short window of opportunity in which those requirements must be met and the need to carefully manage business ventures. As electronic publishing is generally a competitive business generating low profit margins, these vendors are motivated to seek ways of realizing the maximum return from their investment. Responding quickly to customer requests for particular information is one of the primary ways of accomplishing this. If long-term relationships are desired, potential government licensors may need to adjust the pace of their considerations and negotiations to help vendors in this area.

5.3. SUMMARY

The electronic distribution of government information can occur through direct government distribution or through private sector distribution. Yet, government distribution appears not to be the favoured manner. Ontario has launched a project, but most other jurisdictions rely on private sector organizations to distribute databases. These jurisdictions control the data via a variety of license agreements ranging from non-exclusive to exclusive. The Canada Communications Group - Publishing has devised agreements which tend to identify and deal with issues of concern to licensors.

The advantage of direct government distribution of databases is the retention of control, while the advantage of private sector distribution is that it tends to result in lower costs due to the use of industry expertise. Clearly, the challenge is to devise agreements that satisfy both government and private sector.

6. ECONOMICS

- **Who should have to pay to use government data?**
- **On what basis should user fees be calculated?**
- **When should development costs be recovered?**
- **Should fees be lower for non-commercial use of the data?**
- **What economic and distribution decisions will encourage the electronic information market to grow?**

There are numerous economic issues related to the development and electronic distribution of government legal information. The general trend toward cost recovery, the definition of recoverable costs and the movement toward the implementation of user fees are perhaps the most significant issues. Government policies addressing the definition of cost recovery are presented as are the considerations for establishing user fees. Also included in this section are public concerns related to the economics of access to electronic government legal information.

6.1. GOVERNMENT USE OF USER FEES

Governments are moving toward the implementation of user fee policies for public access to legal information in electronic form. Few examples of user fees for database access are available at present because most government databases are either under development or available only within the government. User fee policies are being investigated in most jurisdictions. The types of issues being discussed are:

- What effect will user fees have on the public and on the legal publishing industry?
- On what basis are these fees being charged?
- What factors are being considered or should be considered when determining user fees?
- What are reasonable costs for providing and for gaining access to the information?

6.1.1 Objectives of User Fees

The objectives for charging for access to government databases range from promoting fairness by charging only the people who use the information to generating revenue from a valuable government asset.

Treasury Board Perspective

At the Government Database Colloquium held June 16, 1989, the Chief of the Information Practices Policy Group of the Administrative Policy Branch, Treasury Board Secretariat described the objectives of applying cost recovery principles to government information. From his perspective, the objectives are to:

1. "Foster greater equity by ensuring that beneficiaries pay for services they receive;
2. Bring market forces to bear on the supply and demand dynamic for government publications;
3. Encourage the provider of a service to be more accountable for the quality and efficiency of the service; and
4. Contribute to deficit reduction."

Establishing Objectives

Organizations need to recognize their primary objective before establishing the policies and structure for user fees. Once the objective is clear, it is possible to reach consistent decisions about the many related issues. This is especially important as the decisions reached are most often precedent setting. Some of the issues which arise are:

- whether alternatives exist that will meet the objective,
- toward whom the fees will be levied, and
- what the criteria are for altering fee structures in the future.

Since the issues are still new, information on which to measure the ramifications is limited. Therefore, it is not surprising that opinions vary widely as to the objectives and the actions to be taken. Consistency exists in only one area across jurisdictions: the need for cost recovery.

6.2. COST RECOVERY

Governments are moving away from subsidization and toward cost recovery as a standard policy. This means that government departments whose mandates do not support subsidization, i.e., they were not established "for the public good", must recover revenue for some portion of the services or products they provide. For example, Statistics Canada must recover $25 million or 10% of its annual budget through the sale of standard or customized services. Any part of the $25 million that the agency fails to recover will be reflected in a subsequent budget reduction.

Cost recovery is a concept that is riddled with issues. Even defining the costs to be recovered is problematic. Examples of things to be considered are:

- What costs are included over what period of time?
- If a department needs the database for its own administrative purposes, should it include development costs in the definition of costs to be recovered?
- If development costs are included, over what time-frame should these costs be amortized?
- Should recoverable costs be limited to those associated with dissemination to the users of this information?

The public benefits when governments are run efficiently and effectively. Automation increases cost effectiveness and operational efficiency. In some departments, providing information is an inseparable part of their mandate. Moreover, when databases are developed as part of the automation effort, distribution of this information externally is a natural next step. In prior years, charging for this information would have been politically unpalatable. In the present environment, however, it is more acceptable, if not mandatory. User fees and license fees enable government to generate revenue and to defray the cost of providing the electronic information service.

6.2.1 Government Policies

Federal government guidelines exist to address the user pay policy and the definition of cost recovery. These guidelines apply to all government information holdings. The following are examples:

Federal Information Policy

According to the *Federal Information Policy*, the user pay principle applies except where there is a duty to inform the public. This policy does not speak about the structure or levels of these fees, but leaves these decisions to the ministries.

Policy On Government Communications

The *Policy on Government Communications* (Chapter 480) requires that federal institutions consider the full cost of collecting, compiling, preparing, producing and disseminating information to be purchased by the public. Full cost recovery is not expected in all cases, however. The policy lists circumstances which would warrant less than full cost recovery. For example, if a clear duty exists to inform the public about policies, programs or services, fees and charges to users may be reduced or waived.

Treasury Board Guidelines

The Treasury Board guidelines exclude research and development costs for new applications from the costs to be recovered. A Treasury Board document called *External User Fees and Charges for Goods, Services, Property, Rights and Privileges* advises about the determination of fees and identifies circumstances which may justify less than full cost recovery.

Access To Information and Privacy Acts

The *Access to Information and Privacy (ATIP) Acts* prescribe fees for unpublished databases. These acts do not, however, apply to published databases. A database distributed through a vendor is considered to be published, so commercial distribution gives the licensing institution more latitude in setting fees.

Obtaining a copy of a database through the *Access to Information Act* does not give the recipient the right to reproduce, copy, sell or distribute the database. This right must be obtained in writing from the database owner.

6.2.2 Cost Recovery Considerations

The cost recovery considerations raised most frequently by people within the public sector are discussed below.

Mandate

The mandate of each government department or institution is a key factor in the cost recovery issue. Departments established for 'the public good' are presently exempt from recovering a portion of the costs they incur in providing products or services to the public. For example, the Canadian Centre for Occupational Health and Safety (CCOHS) was set up for the public good. As such, it is not currently required to charge for the information it provides. CCOHS is being put on a revenue track, so it may soon be unable to provide information from its databases free-of-charge.

The National Library has created the CAN-MARC (Canadian Machine Readable Cataloguing) service. This service is a communications format which permits bibliographic records to be changed after they are created. The MARC Records Distribution Service sells copies of bibliographic records which have been created to fulfil one of the Library's mandates: to produce Canada's national bibliography, *Canadiana*. Cost recovery goals are not applicable because the national bibliography is mandated. Instead, the charges are limited to the incremental costs of providing additional copies of these records.

On the other hand, departments such as Statistics Canada operate on a net vote funding basis and must recover costs for certain operations and products. The Government Telephone Agency, the Passport Office and Canada Communications Group - Publishing are special operating agencies or "quasi-Crown corporations" and must generate a profit.

These particular departments do not all provide information in electronic form. It is reasonable to anticipate, however, that departments operating on a cost recovery basis will charge for external access to databases they develop.

Effects Of Automation

Automation is generally advantageous for government offices. In determining their policies on charging user fees to recover costs, some departments are factoring in the costs and benefits of automation. Examples of automation within the government demonstrate benefits like operational efficiency, cost reduction and information sharing. When approaching automation projects, it is often tempting to emphasize the advantages and minimize the disadvantages. To set proper expectations, however, cost and the impact of change, which are the primary disadvantages of automation, must also be considered.

On-line Access to Regulations and Statutes (OARS)

Operational efficiency is most frequently cited as the reason for automation within government. The On-line Access to Regulations and Statutes (OARS) project was created with this objective in mind. The objective of OARS is to fully automate the regulatory and legislative process in government, thus improving operational efficiency. One component of OARS is the implementation of current databases of the federal statutes and regulations. The existing internal database of these materials is grossly out of date. Furthermore, the two hard copy masters available are inadequate to serve the lawyers who have access to and request information concerning these international documents.

Once OARS is completed, many benefits will result. It will be possible to maintain current versions of the federal statutes and regulations and to make the information available in a more timely fashion, i.e., within 24 to 48 hours of the publication of the *Canada Gazette*. It will enhance productivity by facilitating the administrative work required to amend the statutes. The Department of Justice currently relies on two masters and two QL terminals for access to the statutes. Once OARS is implemented, access will be broadened internally and perhaps, in the future, outside the Department of Justice. Additionally, accuracy of the text is likely to be improved since OARS aims for 99.5% accuracy.

OARS was approved by the Treasury Board because of these benefits and also because of its cost recovery potential. Cost recovery is a significant factor in the federal Information Management Policy. This policy requires the investment in and management of information technology on a business case basis.

Alberta Statutes

The Alberta Statutes Project represents an atypical example of staff reductions. The staff required for updating the statutes has been reduced since the introduction of the Alberta Statutes Project. In addition, the statutes are updated concurrently for the paper and electronic versions. The use of computers has made the production of these two distribution media more efficient. Alberta has developed a system that can accommodate both distribution media and is consequently reaping the benefits.

In some jurisdictions, the statute retrieval systems are byproducts of computerized editing and printing processes. These systems were originally designed for editing and printing processes. They have been modified to provide access to databases. Whenever changes in the editing and printing hardware or software are needed, new driver programs must be written to handle imbedded codes in the machine-readable text. As technology changes, these driver programs need to be updated or replaced, so additional human resources are required. These systems can be cumbersome, although they often enable the transition to more efficient systems.

PLEI Bulletin Board

Another benefit of automation is increased information sharing among users in different locations, a key factor in operational efficiency and cost control. For example, the Department of Justice needs more information to better facilitate the Public Legal Education and Information system in Canada. It wants to increase the speed and scope of communication, increase provincial involvement and assist in the planning and coordination of PLEI services. So the PLEI bulletin board is being developed. It will be a national information system for the PLEI system. Phase I will contain program updates from each PLEI member. While this information is currently available in hard copy, it has not been distributed extensively or effectively. One objective of the PLEI bulletin board is to improve this situation. Phase II may involve more information, for example, statistical information such as the student/teacher ratios. According to the developers, the total cost for access to this bulletin board database will be less than $1000 per user.

Electronic information sharing has additional advantages. In the government, as in other organizations where personnel are shifted frequently and managers are expected to grasp their responsibilities and their environment quickly, accurate, long-term information is important as a means of ensuring continuity. This permanent record of government activities also provides the type of archival information officials need to do their jobs and government departments need to demonstrate that they are fulfilling their obligations.

Cost

The cost of developing the technical infrastructures for these systems is not insignificant. They also vary extensively depending upon such factors as:

- the type of computer used, i.e., mainframe vs. p.c.,
- whether an off-the-shelf software package is used or the retrieval system is developed internally,
- scope of the project, i.e., size of the database, the form in which the data is entered into the computer, accuracy of the source and growth of the database,
- range of access i.e., internal or external, number of locations, number of simultaneous users,
- structure of the project, i.e., roles of the government and of the private sector,
- level of marketing, training, support and documentation required.

Since costs vary so widely, decisions made during the planning stages have a dramatic impact on total cost. It is impossible to estimate how much a database system will cost until many parameters have been determined. As a result, the vast majority of database vendors in the private sector are not earning robust profits because of high costs and other factors. The top 10 databases in the US account for 80% of the market. Most databases lose money.

George Mauerhoff, Vice President of Corporate Development at Novatron Information Corporation commented on this topic:

> "Few people in North America are making significant amounts of money in the database business because there are long and expensive selling cycles involved. Customer utilization rates are generally low, trained users turn over frequently, start-up costs are very high, and once you have a customer on-line you then have terrific operating expenses to keep the thing going. Even with hundreds or thousands of customers, this is a very low margin business."

The Impact of Change

An elusive but equally significant cost of automation is the impact of change. Despite the promise of higher productivity, improved efficiency or better working conditions, people are generally reluctant to adopt new procedures and new systems. This reluctance is reduced when the people who will be using the new systems are involved in planning or developing it. Resistance is also reduced when people are educated about the features and advantages of the new system before it is implemented and when they are given adequate training.

When a new system is initially implemented, productivity drops because users must learn to use it. Generally, this downturn is followed by a steady increase in productivity as long as major changes are not made. Organizations that are impatient for increased productivity often make additional changes before the users have adjusted to the initial system. The result is another drop in productivity and user disillusionment with the system. Many new systems have been deemed failures because changes are made so rapidly and frequently that users are not given time to reach the increased productivity stage.

Assessing and incorporating factors such as increased productivity, operational efficiency, information sharing, accuracy and access adds a layer of complexity to the already difficult task of determining the basis for cost recovery principles. An overall awareness of the costs and benefits is important, however, for the development of pricing policies and plans and for the definition of cost recovery.

Development Costs

Another factor for consideration in the definition of cost recovery is development costs. The cost of developing an electronic information retrieval system includes such items as:

- hardware
- software
- telecommunications
- project development and administration;
- data collection, preparation, correction and updating
- data conversion to machine-readable form
- documentation
- training
- marketing/awareness

Recovery of Development Costs

Development costs are incurred by a department in carrying out its mandate, and these costs are usually not incorporated when determining user fees. For example, the database of the Ontario Statutes and Regulations is being developed from the operating budget. The department receives many benefits from the development of an electronic information system, thus justifying the expenditure. If it did not realize sufficient benefit, then the implementation of such a system would be in question. It follows then that these costs would not be included in recoverable costs.

Ongoing Costs

It appears that government departments anticipate the recovery of the ongoing costs incurred by a private sector distributor. No guidelines or policies have been uncovered regarding recovery of ongoing costs incurred by government departments. However, ongoing costs can be significant. Some of the areas in which ongoing costs are incurred are as follows:

- hardware - Upgrades are needed periodically to meet technological changes and system capacity requirements,
- software - Once bugs are worked out, enhancements are typically needed to meet the needs of the users,
- project development and administration - The system performance must be modified, records must be kept, new users must be given passwords, and security requirements must be maintained,
- training - Users frequently need more than one training session to enable them to use the system efficiently. Additional new users require initial training, and existing users require periodic retraining.

In addition, if users are charged for gaining access to the database, billing, accounts receivable, accounts payable and other financial systems must be operated and maintained on an ongoing basis.

Managing Ongoing Costs

Several jurisdictions have concluded that licensing their databases to commercial distributors is preferable to procurement, in part, because of the extent of these ongoing costs. While acting as a representative of the Department of Consumer and Corporate Affairs, Eleanor Zazulak advocated this position:

> "Licensing ultimately emerged as the best way of ensuring internal and external access within available resources, based on a significant upgrading of available hardware and software systems. Secondary

> benefits included opportunities to retain control of the data, improve public access to the data, avoid direct competition with the private sector or the appearance of favouring any supplier, create private sector employment, protect Crown copyright, obtain software upgrades at no direct cost and avoid the cost of providing data to other private sector distributors."

Recovery of Ongoing Costs

The Interdepartmental Working Group on Database Industry Support (IWGDIS) made recommendations about other ongoing costs within the framework of cost recovery: "The costs of updating the database are normally paid by the Licensee at regular periods. The Institution may also require the Licensee to pay a royalty fee as a means of recovering some portion of institutional costs associated with the management of the database including updating costs."

The Need for a Champion

One concern in the area of ongoing costs is that each database development project needs a champion. A champion is a person who has the authority, the enthusiasm and the commitment to ensure that the project is completed. In light of the frequency with which government personnel change positions and in light of the changing nature of budgets, concerns have been raised as to the continuing viability of the database projects currently underway. Consideration should be given to the actions that will need to be taken if the champions or the resources are no longer available to these systems.

Alternate Distribution Vehicles

Situations exist in which development costs are minimal or nonexistent. For instance, materials intended for one distribution method are then made available through another, e.g., a book reproduced on CD-ROM. In this situation, the pricing of the additional distribution methods is likely to reflect only the marginal distribution costs. A concern relating to this scenario is the possibility of undercutting the market for one medium by developing a second. For instance, distribution of the same database, both on-line and by CD-ROM, might be enticing because of the low incremental cost for generating the second distribution medium. Yet, fragmenting the market in this way might result in insufficient sales for each medium.

Concerns have been raised about undercutting the law book market by disseminating of legal materials through electronic vehicles. Generally, law librarians have not cancelled subscriptions to hard copy legal publications when they have subscribed to on-line services providing the same information. In cases where the publication is highly specialized and infrequently used, a small percentage of law firm librarians have discontinued the hard copy subscription. This, however, is not a standard practice. It is not expected that the addition of electronic sources of the same material will render books obsolete.

Newspaper and magazine publishers have found that electronic distribution of their materials does not erode their hard copy sales. Instead, they have found that wider exposure to their publications has resulted in increased sales of their hard copy products. In addition, they receive revenue from the electronic use of these materials.

Differential Fees

Several jurisdictions are considering differential fees. British Columbia is investigating their position on charging for electronic access to government information. The primary criteria is to maintain the lowest cost to the public. One of the approaches they are investigating is differential fees based on the type of use, e.g., higher charges for use of the information for commercial purposes than for personal purposes.

The federal government is considering differential fees for access by the licensing department itself or for access by other federal government departments. According to a discussion paper prepared by the Interdepartmental Working Group on Database Industry Support (IWGDIS).

> "The Institution may also need to deal with the cost of accessing the database. Depending on the circumstances and on the negotiations, accessing the database may be: free of charge; a percentage of the regular fee charged by the Licensee; or the full fee... Where access to the database and possibly services are being requested by other Federal Institutions, the licensing Institution may elect to waive in whole or in part, royalty, service, maintenance and updating charges."

Differential fees may be appropriate to promote fairness, facilitate the free flow of information within the government or for other reasons. Yet, multiple approaches to charging are more complicated to implement and difficult to monitor.

Value Of The Information

Although the emphasis has been placed on the more concrete factors relating to cost recovery, the value of the information is also being considered. The Chief of the Information Practices Policy Group of the Administrative Policy

Branch, Treasury Board Secretariat stated that individual circumstances will influence the pricing decision. In some situations only a portion of the costs may be recovered; whereas, in situations in which "the value of the information exceeds the cost, it may be appropriate to recover more than full cost through some form of royalty regime."

Users interviewed stated that they do not mind paying access fees if they are getting something of value. One user said, for example, that she would not mind paying a user fee for access to an up-to-date consolidation of statutes and regulations.

There is a tendency, however, to overestimate the market possibilities for information. When exploring this factor, it is important to be realistic when determining how great the commercial value for the particular information is.

6.2.3 Comparison — The European Communities

A major aim in the European Community strategy is to establish an information services market served by a strong European information industry. The Commission of the European Communities has developed guidelines in support of this goal. The guidelines regarding pricing policies are similar to those recommended by many Canadians.

> "Pricing policies may vary depending on the nature of the information. A price should be established which reflects the costs of preparing and passing it to the private sector, but which does not necessarily include the full cost of collecting and handling it in the course of routine administration. The price may be reduced if provision of the resulting information service is deemed to be necessary in the public interest. Public sector accounting procedures should not impede receipt of payment for information or services sold."

6.3. PRICING DECISIONS — A BROADER PICTURE

In private sector information systems (IS) departments, an evolutionary process has been recorded. The stages of this process reflect the organization's movement through the process by which technology is introduced and eventually consolidated, as described in Section 2. The stages of this economic process are: cost centre, cost recovery and profit centre.

Initially, the IS department is established to provide a service to other departments in the organization. At this stage, IS is a cost centre. Other departments are encouraged to introduce technology by utilizing the services of the department. The IS budget is absorbed in the organization's overhead, and IS is not required to generate revenue.

When the organization reaches the control stage of development (See 2.1, Information Technology Development Process), several steps are taken to manage the rapid expansion of technology and to ensure that IS development work is more focused and effective in achieving overall corporate goals. One of the steps typically taken is to require the IS organization to recover its costs. During the cost recovery stage, a variety of charge-back structures are implemented. In some organizations, only direct development time is billed. In others, total IS costs are charged on a pro rata basis, reflecting each department's use of IS services.

In the third stage, the IS department becomes a profit centre. Its profitability requirements parallel those of the organization as a whole.

Generally, government is moving from the cost centre stage to the cost recovery stage. In the current environment, it seems heretical to contemplate a profitability mandate within selected areas of government. Until recently, it was equally difficult to conceive of the cost recovery mandates that are now becoming the norm.

Awareness of the requirements for profitable distribution is useful. It will be useful if the government becomes profit-oriented in the area of electronic distribution of information. It can be useful now for the development of mutually satisfactory arrangements with private sector distributors.

The next section discusses factors affecting the profitability of database services, including the need to prepare a thorough business case and understand the requirements of the marketplace. Concerns of the private sector vendors regarding their ability to become or remain profitable are also discussed. These concerns include competition between the public and private sectors, the financial implications of distribution agreements and the issues surrounding the use of exclusive licenses.

6.3.1 Business Case

The preparation of a thorough business case is important. This is true whether the distribution of a particular database is intended to be a profit-making venture or a public service that does not require recovery of costs. As a planning tool, the business case enables proper expectations to be established. It also provides direction for the development and distribution activities to follow.

A sound assessment of both the market potential and the need for the service is critical. Inappropriate assumptions in this area may compromise the viability of the service. Similarly, costing estimates should be realistic. They should cover worst, best and expected scenarios. The rules regarding cost justification and business case preparation are typically different in the public and private sectors. Whether a government department manages the database service alone or with the participation of a private sector organization, the introduction of user fees adds an element to the equation that necessitates careful planning and consideration.

6.3.2 Market Requirements

Knowledge of the requirements of the market is necessary when one is determining whether electronic distribution is appropriate for a particular work. A few of the market requirements that are most important to the people interviewed are identified below. (See also 8.3, Needs Assessments.)

Content

Content is the most important factor in electronic dissemination of information. The information contained in the database must be mission critical to a sufficiently large audience or the database will not be used.

As is true with all databases, but particularly so with legal databases, the content must also be accurate. If users of legal information find the database unreliable, they are likely to return to manual research to find that information. The consequences of presenting inaccurate information to a client or a judge are too severe for it to be otherwise. Finally, the information must be timely. If the information obtained manually is as timely as the information in electronic form, users will avoid the electronic medium and its attendant out-of-pocket charges.

Different viewpoints exist as to the best mechanism to meet these requirements when a private sector distributor is involved. One view is that, as owner, the government needs to implement controls such as quality tests and reviews. These types of conditions are included in some license agreements. Assuming they are reasonable, it would be expected that the vendors would welcome them because they show government's interest and involvement in assisting the vendor to market a high quality product.

Another view is that the market will reject products that fall below a certain standard of quality, so the conditions relating to quality are unnecessary. Conditions of this sort can be cumbersome and costly. They can delay the delivery of the information to the public and make time sensitive material less valuable. Some publishers are concerned that bureaucratic policies and procedures can unduly restrict the flow of information from the government to the public, thereby decreasing the market value of that information.

Providing a high quality product is an objective shared by government and private sector distributors. The involvement of both parties in determining how to achieve this objective efficiently and without hardship is strongly recommended by those who believe the agreements they have negotiated are successful. The key is the commitment of both parties to the spirit of the agreement.

Ease-Of-Use

Users of electronic information sources encounter a series of obstacles when converting from manual to electronic research:

- equipment must be selected and purchased or leased;
- communication software may need to be purchased;
- time must be set aside for training on the new system; and
- a dramatically different method of performing legal research must be adopted.

Users are willing to overcome these obstacles and to pay a fee for access if the system is easy to use. (See 8, Ease-of-Use.)

Price

In its role as licensor, government is in a position to monitor and limit the prices charged by vendors to prevent excessive fees. Some departments are concerned that access to the information may be limited if prices are set without government review.

Government can also impose licensing fees. Typically, these types of costs are passed along to customers. When this occurs, usage fees increase and access may be reduced. The concern exists that government's monopoly over its information may lead to the setting of prices in isolation of the market economy and result in prices which exceed the value of that information in the marketplace. The movement toward increased recovery of costs has exacerbated fears that government will overprice its electronic information in order to improve cost recovery.

Consistency of prices for the same information across distribution media is an issue that has been raised by users and commercial providers of electronic legal information. Increasingly, government policy is inconsistent regarding its charges for government documents. While providing information in printed form at no cost or for a nominal cost, the department will charge for the same information in machine-readable form. These additional costs are passed on to the users of the information who question the disparity in prices between the research media. While it may be necessary to recover additional costs incurred to provide the information in a particular format, consistency is needed in charging policies for government information, regardless of the distribution medium used.

Predictability

CD-ROM and similar distribution media are typically distributed for a flat rate, with discounts for volume and multiple locations. These types of charges are predictable. Pricing for access to on-line databases is more complex. The most common pricing structures for on-line legal databases are:

1. time-based,
2. result-based, and
3. resource-based.

Time based pricing structures reflect the amount of time the user has spent using the database service. Result based pricing reflects the amount of information the user has obtained during the research session. And resource based pricing reflects the distributor's computer resources required to perform the research. Some distributors combine components of more than one pricing structure in their price schedules.

The market is concerned about predictability in budgeting. Users resist pricing structures that prevent them from knowing or estimating with some degree of certainty the charges they will incur when they run a search request. Government departments licensing materials to a distributor must be prepared to adjust to the vendor's pricing structure. Because of the cost of modifications to the vendor's billing and other financial systems, vendors may not be flexible enough to accommodate alternate pricing structures. At the same time, it is advisable to be aware of the needs and preferences of the market.

6.3.3 Competition

Although the Canadian market for electronic government information is growing, it is still small relative to that in other countries. Several organizations, including the Interdepartmental Working Group on Database Industry Support (IWGDIS) and CADAPSO, are working to support the information industry as a means of protecting Canada's position in the global economy. Whether government ownership of primary legal information is helpful or harmful to the overall health of the information industry is being debated across the country. One line of thinking is that rigorous protection of intellectual property is necessary to provide sufficient economic incentives for the growth of the industry. Another perspective is that Crown copyright is an impediment to growth. People who take this view have drawn this conclusion in part by looking at the rapid growth in the US.

Competition vs. Fragmentation

There are questions about the number of competitive database services the market can support. Some people in the database industry believe there is sufficient revenue potential from users of electronic legal information for one or perhaps two services. If this assessment of the market potential for the near term is the correct one, a challenging balance exists between competition and fragmentation of the market. In most industries, competition has been demonstrated to benefit the customers. Quality levels, price/performance ratios and responsiveness to customers improve in a competitive environment. On the other hand, fragmentation of a limited market can result in inadequate profitability for all players.

The market for electronic legal information is becoming fragmented. The development of internal government database systems is one cause of fragmentation. Whether these in-house systems are designed for departmental or interdepartmental use, a portion of the potential user base is no longer available to the private sector vendors. Vendors bemoan cases where they have subsidized the development of government databases for several years, only to find the government department was developing the same database internally. The risk of this happening is growing rapidly as most jurisdictions develop internal systems. Adding to the fragmentation is the provision of these systems to the public and to the vendors on essentially the same terms. In this case, the vendors are operating at a considerable disadvantage.

Over the past few years, government use of private sector electronic legal information services has declined as a proportion of total demand for electronic information. Government represents such a large portion of the potential market for electronic legal information that one can reasonably expect a weaker industry in a fairly short period of time unless balancing actions are taken.

These issues are closely tied to the ownership issues discussed in 4.1, "Significance of the Issue".

Value-Added Services

One approach being taken by the private sector is to respond to increasing demands for value-added services. Whether these services consist of increased information, features, support, ease-of-use or synergy with other products and services, they provide opportunities for increased sales. They also mean greater expense and risk.

Distributors seek to improve the value of the information by offering value-added services such as editorial review, verification, indexing and the incorporation of amendments. They also offer technical features which facilitate ease-of-use. They believe these services result in better decisions because the decision-makers have access to better and more integrated information. The users of electronic information services are demanding more of these services as the amount of information available to them becomes unmanageable. Increasingly, users are requesting databases comprising groups of specialized information sources and the distillation of large quantities of information in summary form. Tools which enable users to locate specific information they need are being developed, but the pace of these developments is lagging behind the market demand for them.

Market demand is also changing the definition of value-added services. As developers of database software respond to user demands for value-added services, certain of these services become standard and are taken for granted. A comparable situation exists in the automobile industry. Items offered as options a few years ago are now sold as standard features and are built into production costs. Items sold as options now are more advanced. Features which gain market acceptance eventually become standard features, and the others are eliminated. We have seen the same type of evolution in databases, and the demand for new value-added services is growing. The effect is that there will continue to be market opportunities for organizations which respond to the changing requirements.

Multiple Database Services vs. Clearinghouse

Users would prefer to deal with one database system. They could then learn one log-on/log-off procedure and one approach to search logic. They could pay one bill and deal with one information provider. Currently, it is not unusual for a librarian to subscribe to fifteen database services. Each service has its own log-on procedure, searching procedures, price list and group of databases. Simply knowing which service provides the materials needed is difficult. The efficient and economical use of these services requires extensive training and practice along with an understanding of the pricing structure. Not only are costs higher for a user who is unfamiliar with cost-cutting techniques, but the quality of the results are poorer. In addition, administrative costs are incurred for each service, and budgeting becomes more difficult when many database services must be managed.

Librarians and other frequent users of electronic information services are eager for the consolidation of databases, and many would applaud the creation of a clearinghouse. Users do not care whether the government or a private sector organization performs this function. They see this as a means of reducing some of the frustrations and costs that result because they must develop such a high level of expertise in so many database systems. Some feel the clearinghouse approach would be a catalyst to growth as it would remove one more impediment by making electronic information easier to use.

Clearinghouses reduce competition and, therefore, can be disadvantageous to the public and the private sector providers in the long term. Whether the public or private sector operated the clearinghouse, that organization would control the distribution of legal information across Canada. The organization's market advantage would be significant. Most feel the short-range implications to users are positive, but the long-range implications may be negative.

With the exception of British Columbia where a consolidated database system of government information is being developed, the trend is moving in the opposite direction. Government database systems with different search protocols, price structures, hardware and software requirements and data formats are being developed by multiple departments in most jurisdictions. Although no standard access language exists, database systems utilizing an interface that is similar to those used most frequently will assist users by reducing their learning curve. By employing a similar interface, government may also be able to reduce the development costs.

6.3.4 Distribution Agreements

Financial Arrangements

A number of government departments have entered into arrangements with private sector organizations for the distribution of government databases. The range of financial structures being employed is wide. Some examples of the types of financial arrangements being considered or used are:

1. The distributor provides government with free access to the databases or provides some other off-setting benefit and pays royalties from revenue generated by private sector usage;
2. The distributor makes the materials available internally and externally and pays no royalty;
3. As licensee, the vendor pays royalties to the original owners of the material; the government receives money for development of the

database; and the private sector organization receives money for marketing, technical support, software and documentation;

4. The government shares royalties with the distributor;
5. The government accepts a lower royalty to receive a buy-back of the product at cost;
6. The licensee pays a royalty that is reduced or deferred to reflect that organization's start-up costs;
7. License fees are offset by other services;
8. The vendor provides free products to depository libraries.

These creative approaches are not new, however, and they are not limited to the provision of legal materials in electronic form. For example, the Law Society of Upper Canada recently awarded a five year contract to Butterworths for the publication of the Ontario Reports. In exchange, Butterworths will provide more than $30,000 per year to Ontario's county and district law libraries, sponsor Law Society scholarships and support an annual symposium on law reporting.

Exclusive Licenses

The licensor of data can offer exclusive, sole or non-exclusive license agreements. The use of exclusive license agreements carries several risks with it. A vendor with a government-blessed monopoly can be given too much control over distribution. This can result in the reduction of private sector competition and public access to the database. Although a small market may be unable to support more than one distributor, exclusive suppliers are not subject to competitive pressures that encourage actions, like lower prices, that benefit users. Value enhancement by others can be hindered as there is little incentive to improve the product.

Some government departments do not offer exclusive licenses because of the potential disadvantage to the public and because exclusive licenses restrict the Crown's use of the information. Others are willing to grant an exclusive license to enable the distributor to penetrate a new market or provide a service in the public interest. The Department of Supply and Services offers two to three year "protective licenses" to enable vendors to recover their initial costs.

6.4. PUBLIC CONCERNS

The institution of user fees for government information is likely to affect public access. Members of the legal community who are unable to justify hardware and software costs, access fees or the time required to learn to use new systems are likely to find themselves at a disadvantage until the use of service bureaus increases. They will continue to have access to the hard copy sources. However, those who use electronic sources may have access to legal information weeks or months sooner and users may have access to information they are otherwise prevented from obtaining.

Differential fees which discriminate against the public at large while favouring government personnel may cause an imbalance in the operation of the legal system.

The users interviewed tend to agree that the government should recover its costs for providing access to legal information electronically. However, they object to policies and procedures which would expand cost recovery to the realization of profits. These people emphasize that any additional cost to the private sector distributors are incorporated in the prices. In light of the significant escalation in prices for legal information, users are apprehensive about further increases which they believe will lead to a deterioration in the quality of legal services provided.

Duplication of judgments is also a concern of users. Duplication results when a vendor publishes the same judgment in general and specialized reporter services. It also occurs when multiple publishers select the judgments they will distribute. The majority of judgments selected for inclusion by the publishers is the same. But each publisher includes judgments not included by other publishers. To be thorough, research must encompass all possible sources. Users find this cumbersome, costly and inefficient. The Law Society of Upper Canada has called for regulation of the publication of law reports to avoid duplication of judgments.

6.5. SUMMARY

The economics of providing government information electronically are extremely complex. Many jurisdictions are investigating pricing issues. This presents a rare opportunity to lay the foundation for appropriate pricing policies.

An understanding of the issues and relevant factors can assist in the definition of recoverable costs. Public access and market requirements can be integrated into decisions made about which costs should be recoverable and how they should be recovered. Opinions on these issues cover a wide spectrum, but there is unanimous interest in establishing policies that protect public access to the law.

Those who develop these policies need to recognize that the introduction of user fees may have broad and harsh ramifications. The concern exists that access fees for legal information constitute the introduction of an elitist element into our society. The result may be that people who cannot use computers or who cannot afford them will lose the right to access.

These pricing decisions need to be made with awareness of the impact on the market and its growth. The Canadian market may be too small to support much competition. Clearly, the balance between fragmented markets and a clearinghouse environment is complicated and difficult to maintain. Perhaps true competition can exist only with more sophisticated value-added products.

Distribution methods are closely tied to pricing and cost recovery. As government enters into arrangements with private sector distributors, some creative arrangements are being developed.

Just how free should information be is a continuing dilemma made more complex by problems of cost recovery, differentiated pricing and even duplicative products. The potential imbalance of access could even alter the dynamics of today's legal system.

7. AVAILABILITY

- **What constitutes availability?**
- **What would happen if legal information were not available to the public?**
- **Is enough being done to ensure awareness of electronically available legal information?**
- **How do government policies influence the electronic availability of legal information?**

Discovering which databases on law exist and how to gain access to them presents problems for the public and the legal profession. Government policies can have an adverse effect on availability of databases, or they can encourage access by promoting awareness. As an example of the impact of the policy on availability, the federal government's Depository Services Program is profiled. Finally, this section contains specific examples of legal information databases that are currently available.

7.1. IMPORTANCE OF AVAILABILITY

Informed citizens are fundamental to the orderly operation of the country. To the public at large, awareness of the law can mean an understanding of individual rights, personal protection and the ability to seek recourse for injury. For the legal profession, access to the law can mean the difference between winning and losing a case, between enhancing or losing credibility. Legal researchers and legal librarians need access to legal information to do their jobs. Elected officials need this knowledge to respond to their constituents. Availability of the law is important to everyone, but people interviewed reported a drop in awareness regarding what is available as electronic databases of legal information are created.

7.2. AWARENESS OF WHAT IS AVAILABLE

Law librarians are among Canada's experts on locating legal information. Yet, even they describe the process as haphazard when it comes to electronic information. According to law librarians, determining what is available too often depends upon "who you know and how extensive your network is." They cultivate contacts within government and "pick up rumours at conferences" about information they should obtain. They are not confident that they have information on the databases relevant to their users. An urgent need was expressed not only by law librarians but also by legal publishers and people within government for an electronic directory of available government information and for contact points within government to facilitate the dissemination of information.

Currently, there are no complete catalogues of government databases. There are, however, several that identify some of the sources of electronic government information at both the federal and provincial levels. (See Appendix C.)

The federal government is taking action toward the compilation and communication of this information. The *Management of Government Information Holdings*, a policy statement issued by the Treasury Board of Canada, requires all federal institutions to maintain a current, comprehensive inventory of its information holdings. Further, government institutions must:

1. "ensure that their information holdings are identified and described in the appropriate government public reference sources, and that information is effectively disseminated where there is a duty to inform the public;
2. make their information holdings available for purchase by the public, where appropriate and there is a significant public demand;
3. make their information available for use within the government, subject to any legal or policy constraints such as those contained in the *Privacy Act* and *Government Security Policy*, in order to ensure an optimal use of information and a minimal response burden on the public; and
4. ensure that all material published by the institution is easily accessible to decision-makers within the institution and is available to the public on request."

When this information becomes available, there will be important results:

1. Canadians will be more aware of the information held by government,
2. government will be better able to facilitate information sharing interdepartmentally and intra-departmentally, and
3. the private sector will be better able to initiate the distribution of government information products.

From a larger perspective, the availability of more government information to a wider audience will assist Canada's effort to capitalize on this national resource.

7.3. POLICIES CONCERNING AVAILABILITY OF GOVERNMENT INFORMATION

Legal information is unlike other information in that its creation, and in some cases its dissemination, is specifically mandated. For example, the *Publication of Statutes Act* requires the publication and dissemination of federal statutes to anyone who requests a copy. Federal regulations must be published in the *Canada Gazette*, Part II, although exceptions to this requirement exist for certain limited types of regulations. The Governor-in-Council may direct publication in the *Canada Gazette* of statutory instruments that are not regulations and of other documents. The *Publication of Statutes Act* also requires the quarterly publication of consolidated indices to the regulations.

Distribution of the *Canada Gazette* is free-of-charge to Members of Parliament and "to such persons as may be prescribed". They may be sold to other people. Upon payment of the prescribed fee, anyone may inspect and obtain copies of statutory instruments.

Publication and dissemination requirements vary across jurisdictions. A preliminary list of these requirements for the statutes and regulations of each jurisdiction has been attached to this paper. (See Appendix D.)

In addition to the mandates to publish and disseminate certain types of legal information, policies are being developed regarding the dissemination of government information.

In *Government Databases: A Discussion Paper to Assist Federal Government Institutions in the Disseminating of Databases*, the Interdepartmental Working Group of Database Industry Support (IWGDIS) advocates increased public access to government information. "Government information holdings should be managed in a manner to facilitate public knowledge of and access to such holdings".

Three federal government policies form the framework for the licensing of government information for electronic distribution:

1. *Government Communications Policy*,
2. *Increased Ministerial Authority and Accountability (IMAA)*, and

3. *Management of Government Information Holdings (MGIH).*

The *Government Communications Policy* establishes the principles for disseminating government information to the public.

The policy on *Increased Ministerial Authority and Accountability (IMAA)* reflects the federal government's increasing decentralization in the management of information. *IMAA* gives federal departments greater freedom in managing their own affairs, including the licensing of electronic information.

Management of Government Information Holdings (MGIH) establishes principles that apply to the dissemination and use of government information. Its goal is to ensure the accessibility of information to government decision-makers and to increase the availability of this information to the public. It encourages the commercial distribution of federal government databases.

7.4. OBSTACLES TO AVAILABILITY

Despite the trend toward increased availability of government information, obstacles still exist. Within government, the major obstacles are operational issues, inexperience in electronic publishing and standards and guidelines for databases. For the private sector, cost considerations and inexperience in working with the public sector constitute the primary roadblocks.

7.4.1 Obstacles in Government

As mentioned earlier, revenue generated from the use of government databases normally does not flow into the provider department. Typically, the revenue goes into a general fund. Departments licensing information to a distributor incur costs. The department is responsible for such things as administering the license agreement, reviewing and correcting the data, performing quality tests and determining with the licensor the appropriate format for the information.

Departments distributing the database directly incur much greater costs. Cost control is a significant issue in government at present. The prospect of adding to its expenses while receiving no offsetting revenue discourages departments from seriously considering the development of databases for their information.

Another obstacle is the competition among departments for resources. Further, within departments programs must compete for financial and personnel resources. The budgeting process in many jurisdictions is inflexible. Often, the budgeting process does not allow for the transfer of money within the department's budget, for example, from one project to another. In addition, departments are not rewarded for exceeding revenue objectives, particularly if the department must exceed its expense budget to do so.

The development and distribution of databases is not in the mandates of many departments. A department attempting to provide services beyond its mandate risks increased demands on its resources. A database with problems also creates the risk that the department will be criticized for a poor product, inadequate service or other problems.

In addition, some departments are not familiar enough with the policies, procedures or legal requirements surrounding the licensing of their information to enter into licensing agreements comfortably. The Interdepartmental Working Group on Database Industry Support and other groups are developing guidelines and providing support to departments in need of advice. As more departments gain experience which they are able to share, and as more guidelines are established, this obstacle may be removed.

Finally, a small number of people within government expressed a concern that the dissemination of information not previously disseminated could result in awkward questions about that information. According to a senior level government source, some people responsible for the collection and storage of information operate from a "position of perceived threat".

7.4.2 Obstacles in the Private Sector

The biggest obstacle reported by the private sector is the difficulty in determining what source material is available within the government for electronic publication. This obstacle has been raised in other reports and in the colloquia held by Department of Communications. The *Management of Government Information Holdings* policy addresses this problem by requiring departments to prepare inventories of all information holdings. Similar requirements have been outlined under the *Access to Information Act* and the *Privacy Act*. MGIH also requires departments to establish a procedure for public access to published materials.

Another obstacle private sector organizations encounter is their inexperience at working with government. This problem is compounded by the absence of standard approaches across departments and jurisdictions. As guidelines are developed within government and as the public and private sectors work together more frequently, this obstacle will be reduced. In the meantime, both public and private sector organizations must strive to understand the other's expectations and procedures at the initial stages of negotiations.

Private sector organizations have expressed concerns about the restrictive nature of government license agreements. For example, if the duration of the license is brief, private sector organizations take a significant risk by investing in a publication. Licensees need a reasonable amount of time to recover their start-up costs, particularly if value-added features are added. Negotiations have been most successful when the parties openly discuss what they are trying to achieve through individual terms and conditions and alternative ways of meeting these objectives.

The licensing process itself is an obstacle to the private sector because it moves much slower in the public sector than it does in the private sector. The Chairman of the Information Technology Association of Canada (ITAC) has said that the rule in the IT industry is "better never than late" because the life span of many products is so brief. Some departments are aware of and prepared to meet this requirement. The Canada Communications Group - Publishing (CCG - P), for instance, is a door of entry to the federal government for private sector organizations. CCG - P is prepared to negotiate and grant licenses within three to six months.

Finally, the cost of preparing and presenting proposals and subsequently negotiating license agreements can be prohibitive for private sector organizations. For example, costs rise rapidly when negotiations involve numerous meetings or proposals must be revised several times. The development of guidelines and standard approaches by government and the acquisition of experience by both parties will contribute to a reduction in this cost.

7.4.3 Obstacles to the Public

Concerns have been expressed regarding obstacles to public access to government information. Some of these obstacles have been discussed in other sections. In addition to the ownership, distribution and economic issues surrounding public access are availability issues. Availability in both official languages and availability to users in geographically diverse locations are two of these issues. The third such issue revolves around the need for accuracy, reliability and timeliness of the data.

Official Languages

To be available to the public, federal government legal information must be available in both official languages. Pursuant to the *Official Languages Act*, by January 1, 1991 federal government institutions will have to begin ensuring that all "regularly and widely used automated systems for processing and communication of data acquired or produced by" government departments can be used in either official language. It has been reported that Canadian software companies may not be able to develop French versions by 1991 within their existing budgets. On the other hand, US companies like Microsoft Corp, Ashton-Tate, WordPerfect Corp, and Lotus Development Corp. have already developed French language versions of their programs.

A Treasury Board circular issued December 30, 1988, establishes "progressive objectives for bilingual microcomputer systems" within the government and target dates for meeting bilingual requirements for hardware, software, related documentation and training.

Geographic Equality

Equality of access can be impeded if private sector distributors are unable or unwilling to include information from small provinces or territories because these databases are not economically viable. In Australia and New Zealand, for example, state statutes are in the public domain. Electronic publishers make the "jewels" or highly profitable states' statutes available on-line and leave the unprofitable states' statutes - "orphans" - for the government to publish. In Canada, government periodically supports new database ventures that may not be commercially viable, but are necessary in the public interest. Private sector organizations can at times make this type of information profitable by grouping it with other databases Or they might, according to Professor Hugh Lawford, President of QL systems, subsidize the creation of databases "in marginal areas because the private company believes it has a social responsibility in Canada," as QL Systems has done. It has been suggested that public access to legal information be subsidized by government to ensure equality of access.

Geographic equality of access to electronic legal information is an issue that is unlikely to be resolved quickly. Three factors are likely to improve this situation, though. The first is the increased experience in electronic legal publishing by government. The second is advances in technology. And the third is the reduction in cost to publish legal information electronically. Over time, these factors will narrow the gap that currently exists and provide the public in all jurisdictions with more comparable electronic access to legal information.

Requirements

Finally, it should be noted that the mere provision of government legal information electronically is not in itself sufficient to constitute availability to the public. There are certain minimum requirements that must be met for this information to be useful and useable. For example, the data must be accurate, reliable and timely. In addition, the database system must be reliable. It must be operating and available for use at least during regular office hours, and it must be capable of supporting peak demands from users. In addition, the database distributor must provide training and user support as part of its service. (See also 8, Ease-of-Use.)

7.5. LIBRARIES — ONE SOLUTION

The public relies on public libraries and occasionally on courthouse libraries and university libraries for legal information. Differential fee policies that reflect this reality will support access by the public. Statistics Canada has implemented such a pricing structure. A fundamental part of Statistics Canada's charging policy is that the information be made available, without economic restriction, to the media and to libraries so a larger group of people can have access to it.

7.5.1 Depository Services Program

The federal government has a program that enables broader access to its information. The federal Depository Services Program is in operation across Canada. Through this program, information produced by the Canadian government is deposited in libraries so people who might not otherwise have access to the information can have it. There are 1,700 federal depository libraries in Canada. Of these, sixty are full depository libraries that receive all information in hard copy form. At present, the program does not include government information provided in electronic form. If it were expanded to include this medium, a finite number of depository libraries are willing and able to handle electronic products. But this core of libraries would provide needed services to a percentage of the public. Law librarians and members of the public are reliant on the Depository Libraries for government documents to which they otherwise would not have access.

Provincial depository programs provide access to their own government documents.

7.6. EXAMPLES OF AVAILABLE DATABASES

This section is intended to provide a snapshot of statutes and regulations databases currently available. It is not intended to be a comprehensive list. For a detailed study of judgment databases, see the Canadian Legal Information Centre's *Electronic Distribution of Judgments* paper.

7.6.1 Federal Government

QL Systems provides electronic access to the *Revised Statutes of Canada* (RSC) through a non-exclusive service contract. Currently, QL Systems is the only electronic distributor of the RSC, although other private sector distributors have expressed interest in providing access to this database. The Department of Justice is discussing the issues related to providing the RSC to a broader base of publishers. All federal Department of Justice offices have access to the QL system. The Department of Justice pays for the service at the same rate as other QL clients. However, it receives a rebate based on usage as a royalty payment from QL Systems.

7.6.2 Alberta

Internal, on-line access to statutes and regulations is available through Alberta's computer system. These databases are also provided through QL Systems. The database is updated twice each year. The government updates and manages the information and sends it to QL Systems for distribution. The QL system is easier, albeit more expensive, to use than the internal government system. There is a considerable amount of discussion about public access in Alberta, and CD-ROM is being considered informally as a possible distribution mechanism.

Most administrative tribunals in Alberta have in-house databases. In addition, Public Utilities, Worker's Compensation and the Labour Relations Board decisions are available to the public through QL Systems. In addition, the Alberta Legislature has its own in-house database.

7.6.3 British Columbia

In British Columbia, Land Titles information is now available on-line to the public. Government is tentatively planning to provide public access to databases containing central registry information and information from the Company's Office. A court's file tracking system is on the horizon, and on-line availability of the statutes is on the 'near horizon'. If the British Columbia government proceeds with the statutes database, it will probably develop custom software because the database system is being developed primarily as a tool for creating the statutes. A secondary consideration is providing public access. The judgments database is available to certain government personnel, including supreme and county court judges. The biggest issues surrounding the development and distribution of these databases are who will have access to them and how will costs be recovered.

7.6.4 New Brunswick

In New Brunswick, the statutes and regulations are available exclusively to government personnel on an internal database. Although they can be searched directly, the system permits the searching of only one statute or regulation at a time. Government personnel who need to do full statute or regulation searching run these searches on QL Systems' databases. The New Brunswick government pays full rates to run searches on QL Systems' databases.

The English version of the New Brunswick statutes is current to 1989 on the internal database and to May 1986 on the QL Systems database. The French version of this database is current to 1985. It is not available on QL Systems.

Regulations are current to June, 1990. The government is concerned about the lag time between when they provide information to QL Systems and when it is made available on QL's databases.

7.6.5 Ontario

CT Online distributes several Ontario databases to the public, including:

- the *Ontario Income Tax Act*,
- Ontario Retail Sales Tax information,
- Federal Sales Tax information,
- Goods and Services Tax information,
- Ontario Corporation Tax information,
- news in various tax areas,
- tax cases,
- the *Tax Court Sitting Schedule/Directory*, and
- the *Information Circular*.

CT Online also provides on-line news flashes relating to tax matters.

7.6.6 Prince Edward Island

The Supreme Court judgments and the statutes of P.E.I. are available on-line for internal use, and they are up to date. The regulations will be on-line for internal access once P.E.I. completes the revision of its numbering system for the regulations. Neither the statutes nor the regulations are available electronically for external access. Although government is investigating the issues surrounding external access to this material, it questions the advantages to be gained.

7.6.7 Quebec

SOQUIJ is mandated to ensure on-line access to the Quebec statutes and regulations and to all published and unpublished judgments emanating from Quebec courts. SOQUIJ also offers specialized databases for practices such as immigration. These databases are available to the government and the public.

7.6.8 Saskatchewan

The Saskatchewan government is developing an internal database on which the statutes will be available by fall. The system is being tested now. A Legislative Assembly database which encompasses the clerk's ledger and Bills in Progress is also being developed. Although this database is being designed for internal use, it will be updated so information can be printed at the end of each day and published with the votes and proceedings.

7.7. SUMMARY

Awareness of what legal information is available is a serious concern within the industry. At a minimum, a frequently updated compendium needs to be introduced, managed and made available.

Several obstacles to availability influence government. The use of cost-centred approaches to budgeting reduces the fiscal capability and incentive of many departments to develop databases for external and, frequently, for internal users. That, coupled with the dearth of expertise required to develop such significant projects and the inflexibility of the budget process, hobble development efforts.

In the private sector, equally large obstacles appear. Not knowing what government information is available for database automation or how to go about licensing such data slows the market growth. The cost and time required to finalize a government license agreement scares off many would-be entrepreneurs. Signs of improvement, however, are beginning to appear.

Public policy may also negatively affect the availability of electronic information. The *Official Languages Act* requires that both official languages be accommodated. Currently, no Canadian vendor has the technical capability to meet this requirement. Concerns about providing access to remote geographic locations and distributing databases containing infrequently used information introduce economic obstacles for some vendors.

And yet, a significant number of database projects exist today.

8. EASE-OF-USE

- **Why don't more people use legal databases?**
- **Is technology preventing people from using legal databases?**
- **Are the technical solutions affordable?**
- **Why are "needs assessments" so crucial to the development of database systems?**
- **What do users mean when they speak of ease-of-use?**

Although cost is a key factor in the use of electronic legal information services, a survey conducted by InfoGlobe found users were much more concerned with ease-of-use. The purpose of this section is to present

- what constitutes ease-of-use,
- how technology can influence this area,
- what role standards can play, and
- how information providers can make their databases easier to use and, therefore, more accessible to the public.

8.1. USE OF ELECTRONIC LEGAL DATABASES

Among the advantages of databases are:

1. the increased speed of publication and dissemination of the information,
2. the increased timeliness of the information, and
3. the greater speed and precision in searching for information.

For the users of legal information databases, this means an increased ability to know what the current law is. In some cases, people can locate legal information that they could not locate using traditional sources. As one user described it, "A good search on a database can be far more effective and efficient than going through the stacks." In light of the many advantages to be gained from the utilization of databases, it is surprising that more people do not use them.

Statistics show that few Canadian lawyers are direct users of legal databases, and the number of new users is growing very slowly. Many lawyers are indirect users of legal databases. They rely on librarians or expert searchers within or outside their organization to run search requests for them. A significant factor in this arrangement is that research constitutes a small portion of a lawyers' practice. The initial training required to learn to use a database must be followed by regular practice if the user is to attain a reasonable level of confidence and competence. Lawyers who rarely need to do research cannot justify the time or cost of adding database searching to their skills inventory. The main reason lawyers do not use databases is they find them difficult to use.

The largest group of legal database users is law librarians. Most librarians have extensive training and experience in electronic research. Yet, few law librarians find legal databases easy to use.

8.2. TECHNOLOGY AND COST — MAJOR RESTRICTIONS

Technology which makes database systems easier to use exists. The cost of this technology is prohibitive for many enterprises. Consequently, the technology is not widely available. Even the more advanced technology is not yet at the stage at which successful, efficient searches can be ensured to a novice user.

Some of the larger database providers are using artificial intelligence to enhance their search and retrieval software. For example, software is now available that responds to a user's request for information that is *similar to* the information obtained from the original search request. The capability to interpret and modify a search like this is a major breakthrough in database software. Comparable breakthroughs can be expected over the next decade.

In the meantime, developers and providers of databases can make their services easier to use by conducting needs assessments and incorporating economically feasible user requirements into their database software.

8.3. NEEDS ASSESSMENTS

A "needs assessment" is developed by compiling and analyzing user requirements. Usually, information about user requirements is assembled by interviewing users as well as conducting surveys and distributing questionnaires. Users often express their needs in relation to the system or process they currently use because they are familiar with it. It is important to understand what users are trying to accomplish when they state their requirements. Although users often identify very specific solutions to their needs, more effective alternatives may be available.

Once the requirements of a representative sample of users are collected, they must be analyzed and measured against criteria appropriate to the situation. Once the functions of the system are determined and the initial design is completed, the key requirements should be reviewed to ensure their inclusion into the system.

8.3.1 Information Technology Association of Canada (ITAC)

The Information Technology Association of Canada (ITAC) discusses needs assessment in a study entitled, *Putting the Pieces Together - Case Studies on the Deployment of Information Technology in Canada*. Industry, Science and Technology Canada and ITAC commissioned this study. It focuses on factors leading to the successful deployment of information technology and factors impeding successful deployment.

Nearly all of the companies profiled said that it is important to evaluate the specific needs of users before selecting or designing a new system. Even so, more than half of the senior managers proceeded to plan their new systems without speaking to the users. These senior managers believed their knowledge of user needs was sufficient to forego direct involvement by the users. Of the companies that involved users in the planning process, only two or three had explicit processes for evaluating user needs. In no case was there evidence that all needs were considered in the decision-making process.

The study went on to say that the companies involving users from the outset found that implementation of their systems was easier and more successful. Even if senior management had a fairly clear understanding of user needs, failure to involve users in the process led to user resistance. The study concluded that "user consultation is more useful as a selling technique than as a factor that drives the deployment of new technology."

8.3.2 Policy on *Management of Government Information Holdings*

The federal government is encouraging the completion of needs assessments as part of the planning and development process for federal information. For example, the policy on *Management of Government Information Holdings* speaks to needs assessments. MGIH says that a needs analysis should take into account:

1. "the obligation of the institution to create or collect only that information relating directly to and necessary for the operation of authorized programs and activities;
2. the requirement to attempt to satisfy new information needs through intra- and inter-institutional sharing of information, where permitted

by law or policy, or through commercial sources, prior to creating or collecting new information; and

3. a consideration of the appropriate hardware, software and communications technologies to ensure data integrity and to deal with the processing, transmission, use, maintenance, accessibility, storage, disposition, and dissemination of the information. It is also necessary to give consideration to meeting the requirements of the *Privacy Act* and the *Government Security Policy*."

8.3.3 Examples of Needs Assessments

Few jurisdictions have conducted needs assessments for the database systems they are developing. In some cases, requirements have been established by "management fiat with little consideration of whether [the system] will work or is needed." In other cases, planning is based on limited statistical information, anecdotal information from users and the knowledge of the people responsible for the development of the systems.

In British Columbia, a Justice Technology Advisory Committee has been established. This group includes representatives from the British Columbia Law Foundation, the Law Society of British Columbia, the Chief Legislative Counsel and other groups within the legal community. One of its purposes is to provide input regarding requirements of the system.

A working group met with users at the early stages of the OARS project to establish user needs. This is one of the only projects uncovered by this study which conducted a formal needs assessment. OARS, the On-line Access to Regulations and Statutes project, is being developed in two phases. One phase is a pilot project to provide access to the current consolidated regulations and statutes. The other phase is a pilot project that will allow a user group at the Department of Justice to draft, edit and revise regulations. The scheduled operational date for OARS is mid-1991.

8.4. FACTORS CONSTITUTING EASE-OF-USE

The factors users mention most often as supporting ease of use are:

1. Search and retrieval software that uses logical and meaningful words rather than codes or symbols for commands;
2. The ability to search on levels, e.g., menus for new and infrequent users and short cuts for experienced users;
3. Simple and straightforward log-on/log-off procedures;

4. System features that enable them to find specific information quickly or to follow a logical progression through their research, e.g., the ability to move from the text of a judgment to a relevant statute with a single command;
5. The ability to obtain search results easily and quickly, e.g., printing, downloading
6. Administrative aids e.g., invoices that are easy to interpret and use; and
7. Adequate training and support. Users strongly prefer classes that offer hands-on experience, and they respond quite positively to a customer support group with a toll-free number.

When conducting a needs assessment, organizations should consider this list. It is also important to discuss the particular database with users to understand how and why they will use it, the frequency of use they anticipate and the other factors they believe are key to their acceptance of that service.

8.5. SUMMARY

Ease-of-use is the key component in predicting the future viability of any database product. Until technology becomes affordable enough for database developers to make significant enhancements, producers need to be sensitive to their current and future users' needs to ensure that the greatest return is realized with any investment they make. Only after ease of use problems are mitigated will use of on-line legal databases increase dramatically.

9. CLIC'S NEXT STEPS

CLIC Improves Access to the Law

Commissioning this report is a good example of CLIC's commitment to access to the law. CLIC improves access by making information on the law easier to use, more responsive to public and professional needs, and equally available to all Canadians.

CLIC is a national non-profit organization created in 1973 by governments, law societies and organizations with an interest in legal information. Its work over seventeen years has helped to provide the public and legal profession with computer databases on law, public legal education programs in all provinces, and improved legal research tools. It has been a pioneer in identifying critical issues in legal information access. This includes recognizing and promoting the need for an accessible national electronic judgment database, and the use of plain language in government forms and documents.

9.1. CLIC's Concerns About Access

CLIC is concerned about maintaining public access to government electronic information on law. It believes there is now a new urgency to find workable solutions to the "hard" information access issues that have been debated for so long. CLIC also believes that there is new willingness to revise long-held ideas, consider new options and find innovative ways in which the public and private sectors can cooperate.

Ensuring public and professional access to government electronic information on law must become a priority. It must be a priority not only for our federal and provincial governments, but also for organizations that preserve access to legal information.

What's Happening Today

As this report indicates, many governments are converting their statutes, regulations, registry, and judgment information into electronic databases. Operational decisions are being made today that will determine tomorrow's access to this vital data.

This research has reinforced CLIC's long-standing interest in the broader issues of access to government information. Old issues such as Crown copyright are still being debated. New issues, such as public interest pricing for legal information databases, have yet to be thoroughly explored. Other issues have not yet even been discussed. This includes the impact of using electronic information on law to generate revenue for governments.

As a first step in focusing attention on this issue, CLIC commissioned this report. The report identifies the major issues in access to government controlled electronic legal information. It stresses the inter-relationship of the issues and points out the necessity of developing a broad perspective to determine the future of public and professional access to this vital information.

CLIC's investigation of this area has underscored the importance of these issues, the need for further research, and the timeliness of this initiative. The project has already generated considerable interest within governments, publishing and the legal profession.

9.2. CLIC's National Task Force

CLIC created a national Task Force to identify and explore viable options for electronic dissemination of legal information. The goal of CLIC's Task Force is to recommend ways in which Canada can ensure public access to legal information. Specifically, the Task Force will look at the electronic legal information that is controlled or published by governments.

After a preliminary discussion of the issues, the Task Force has decided to create a national consultation process. Regional meetings will allow individuals, organizations and governments to explore alternatives and identify access problems and their solutions. The Task Force will combine the input from the consultations with the ideas expressed by participants at CLIC's National Forum on Access (May 31 in Ottawa). In a final report, the Task Force will recommend what can be done by governments, other organizations and individuals, and CLIC.

This diagram on the following page shows how the work of the Task Force will progress from initial discussion to final report.

STEPS IN THE TASK FORCE PROCESS

Step One	Step Two	Step Three	Step Four	Step Five	Step Six	Step Seven
Background Paper & 1st Task Force Meeting	Forum at CLIC's AGM	National Consultations	Research	Task Force Discussions **	Report Writing	Recommending Action
• Identify issues • Focus attention on issues	• Focus attention on issues • Gather information & identify different perspectives • Preliminary look at alternatives • Identify groups that should participate in the Task Force's national consultations	• Get ideas and reactions to issues & alternatives • Learn about potential solutions from groups & individuals • Clarify alternatives and select options for further consideration by Task Force • Involve groups & individuals that will have a role in making decisions about these issues & implementing the decisions	• Research designated issues as identified by the information gathering process • Turn ideas & alternatives into options for action - by CLIC - by users of legal information - by governments - by other organizations • Describe options in detail • Analyze impact of options on: - economy - information producers (public & private sectors) - information providers (libraries, educational institutions, government departments, information centres, etc.) - users (general public, special audiences, legal profession professional /researchers) - legal system (courts, governments) - law and legal process • Do cost benefit analyses on options	• Task Force selects issues /options to be covered in report • Debate & discussion identifies Task Force's positions on the issues & the options for action • Task Force could use small groups to work with CLIC staff in refining positions & options for action ** Because of the complexity of the issues, it may be necessary for the Task Force to (reluctantly) confine itself to dealing with a few issues in detail, rather than trying to deal with all of the issues	• Preparation & review of Task Force's report to CLIC • Task Force reviews draft report; CLIC makes changes as directed	• Task Force presents report with recommendations to CLIC Board • CLIC discussion • Presentation of findings & recommendations to public and private sector - distribution of final report - national meeting - presentation to individual governments & organizations

9.3. Creation of Task Force

Task force membership includes representatives from the

- federal and provincial governments,
- legal profession and the judiciary,
- legal publishers and database companies,
- libraries and academia,
- information management and systems design industry.

Organizations with an interest in access to justice issues were asked to nominate representatives. These official representatives will be an important liaison between the Task Force and their organizations. The organizations are the Canadian Bar Association, Canadian Judicial Council, and CADAPSO (Canadian Association of Data, Professional Services, and Software Organizations).

Two representatives of CLIC's Board serve on the Task Force. They will both bring CLIC's perspective to the Task Force's deliberations, as well as provide it with their own insight.

The Co-Chairs of the Task Force are:
Gary Rodrigues, Vice President, Thomson Professional Publishing, Canada and CLIC's Board member representing legal publishers
Paul LeBreton, Deputy Minister of Justice, Province of New Brunswick

List of Task Force Members Representing the CLIC Board
Gary Rodrigues - Vice President, Thomson Professional Publishing, Canada
Alan Reid, Q.C. - Gowling, Strathy and Henderson

Representing a User Perspective
John Grace, Information Commissioner of Canada
Gordon Henderson, Gowling, Strathy and Henderson,
  - Law Society of Upper Canada representative
Judy Kingston, Kingston and Associates
  - Canadian Bar Association representative
Pierre MacKay, Université du Québéc à Montréal,
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Denis Marshall, Law Librarian, Queen's University
  - Canadian Association of Law Libraries representative
Chief Justice Allan McEachern of British Columbia
  - Canadian Judicial Council representative
Marianne Scott, National Librarian of Canada

Representing a Government Perspective

Dr. Aaron Caplan, Director, Systems Development and Statistics Section, Justice Canada - Department of Justice representative

Pat Horner, Director, Canada Communications Group - Publishing

Mary Frances Laughton, Department of Communications, Canada

Paul LeBreton - Deputy Minister of Justice, New Brunswick

Malcolm McAvity, Director of Land Titles, Ministry of the Attorney General, British Columbia

Representing the Publishing Industry

Sean McCafferty, STM Systems Corporation
- Canadian Association of Data, Professional Services, and Software Organizations representative

Representing an Information Economics Perspective

Dave McQueen, Department of Economics, York University

Representing the Information Technology Perspective

Jim Kranias, Vice President, DMR

9.4. Consultation Opportunities

A national forum on access to government databases on law will be held in conjunction with CLIC's 1991 Annual Meeting. The date of the forum is May 31, 1991.

The CLIC Task Force will use the public forum as an opportunity to gather ideas and help it identify options for future action.

Regional Participation

The Task Force plans to hold regional roundtable discussions. Individuals and organizations with an interest in access to justice issues will be invited to attend. CLIC would be pleased to hear from you or your organization.

For information on the CLIC Forum, or how you can participate in the Task Force activities, or for additional information about CLIC, please contact us at either of our offices.

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APPENDIX A

British Columbia Strategic Plan for Information Technology

The *Ministry of the Attorney General Strategy Planning and Change Management Process* was completed recently. This document is the first step toward British Columbia's strategic plan for information technology.

The plan encompasses all information systems within the Ministry of the Attorney General. It covers three time frames: near term (next year's plan), a three year plan and a 7-10 year plan. All branches within the Ministry participated in the development of this strategy which establishes collective priorities and defines the architecture within which each branch will formulate its own information technology plan. The Ministry will use DEC or IBM for its technology platform, although branches may elect to buy any manufacturer's hardware that allows for complete communication among the branches. Money is allocated by the Assistant Deputy Minister of each branch.

The major sections of the *Ministry of the Attorney General Strategy Planning and Change Management Process* are:

1. **Diagnostic Review**
    a. External Influences Analysis - influences outside the Ministry that are likely to have an impact on the plan
    b. Internal Capabilities Analysis - structure currently in place, past response
    c. Issues Clarification - issues to be addressed in the plan; typically, things over which government have no control

2. **Organizational Profiling**
    a. Current, Organizational Profile Development - current organization chart, job descriptions, budget
    b. Future Organizational Profile Development - plans to change the organizational profile, e.g., new job classifications
    c. Mission and Core Values Statement
    d. Operational Strategies Development - future plans; steps to be taken to achieve these plans

3. **Objectives Establishment**
    a. Near Term Objectives Development - review of the prior year and examination of the upcoming year
    b. Impact Analysis - the impact of objectives on operations, e.g., human resources, information systems, financial and legislation
    c. Operational Strategies Refinement - determination of whether the proper strategy is in place
    d. Program Development Identification - details of the strategy

4. **Plan and Program Development**
    a. Operating Plan
    b. Information Technology Plan
    c. Organizational Plan
    d. Financial Plan
    e. Communications Plan - directed to users, staff, the public
    f. Legislation Plan - legislation needed to implement the plan, e.g., How do you certify a document that is in electronic form? Who owns government documents?

5. **Contingency Analysis**
    a. Upside Contingency Plan - plan to take advantage of opportunities for speeding up implementation
    b. Downside Contingency Plan - plan in case resources are cut

APPENDIX B

ELECTRONIC ACCESS TO STATUTES AND REGULATIONS

Jurisdiction	Internal Access	External Access
Alberta	- Electronic database updated twice a year - Contains statutes and regulations	- Updated statutes and regulations available through QL - Government pays full price to search QL
British Colombia	- Putting statutes online is on the horizon - If project succeeds, will probably use custom software - Database to be developed more for creating the statutes than for providing access to them	- Tentatively planning to give access to the public or some segment of it - Biggest issue is cost recovery
Manitoba	- All statutes and regulations from 1986 onward are available electronically - Wang computer used for internal search and retrieval	- Statutes and regulations available online through MDS
New Brunswick	- Updated electronic database containing statutes and regulations - Information retrievable via a Wang VS6 - Only one statute can be searched at a time - English statutes updated until 1989 - French statutes updated until May 1985 - Regulations updated until June 1990	- Available through QL (government has to pay full price to search the statutes) - English statutes updated until 1989 - No french statutes online - Regulations updated until June 1990

Electronic Access to Statutes and Regulations (cont'd)

Jurisdiction	Internal Access	External Access
Newfoundland	- No statutes or regulations available online (a revision of the statutes is currently underway using Wordperfect and Ventura. Once it is completed, the statutes and regulations may be made available electronically)	- No external access to electronic databases
Northwest Territories	- Access is available internally on a database servicing the Office of the Legislative Counsel only. There is talk of hooking up the database to make it available to the Department of Justice and the entire government.	- None
Nova Scotia	- Statutes and regulations stored on an internal database	- No external access to electronic database
Ontario	- Complete statutes and regulations will be put on CD-ROM - Target date Spring 1991 - Will be updated twice a year - Software being developed internally	- No decision has been taken as to whether and how CD-ROMs will be made available to the public
Prince Edward Island	- Electronic database containing statutes and regulations - Statutes completely updated - Regulations soon to be updated	- No external access to electronic databases
Quebec	- Statutes and regulations completely updated and stored in government databases	- Electronic databases containing statutes and regulations - Databases accessible through SOQUIJ

Electronic Access to Statutes and Regulations (cont'd)

Jurisdiction	Internal Access	External Access
Saskatchewan	- Database containing statutes and regulations available internally to Department of Justice only - Completely updated	- No external access to electronic databases - No plans to develop a database available to the public
Yukon	-Statutes were previously accessible on an internal database. They were transferred on to disks and are currently available through QL -The Legislative Counsel provides QL with completely revised disks whenever there are changes and QL then loads them onto its system -Regulations are not currently available online but there is talk of a similar agreement with QL	- Statutes available through QL. Regulations unavailable

APPENDIX C

Sources of Electronic Government Information

- Access Register. This is a massive document containing data holdings of the federal government. It is described as being incomplete, unspecific and hard to use.
- Registrars of Tribunals. This is the most common source for information about final decisions.
- Rogers, Helen. *Canadian Machine Readable Databases: A Directory and Guide*. Government Printing Office, Ottawa, 1987.
- Campbell, H.C. *The ESPIAL Canadian Database Directory: A Guide to Current Canadian Information contained in National and International Databases and Data Banks*. Espial Productions, Toronto, 1990.
- Electronic publishers and legal publishers - The publishers have lists of the legal information they distribute.
- ATIP - Access to Information Program. This federal program was established to provide information that is officially certified to the public upon request. Often, the information is not available elsewhere, so ATIP is a service of last resort.
- ALITA - Alberta Legal Information Technology Assessment project. This two year project funded by the Alberta Law Foundation and sponsored by the University of Alberta Faculty of Law and the Alberta Law Reform Institute is scheduled for completion in 1992. The project focuses on legal information systems and the impact of technology. One of the products will be an inventory of on-line and CD-ROM legal and law-related databases. Another product of this project will be a guide to on-line public registries. It is the intention of the Project Director to contact legal publishers and law librarians to identify information that would be appropriate for on-line publication but which is not yet available on-line.

APPENDIX D

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS

Stats.

Jurisdiction	Publication	Distribution
Canada	- Acts shall be printed in two parts. Publication of Statutes Act R.S.C 1985, c. S-21 ss. 10(1), 11. - The Statute Revision Commission has the authority to publish or make available the consolidation of statutes or parts thereof in different formats Statute Revision Act R.S.C. 1985, c. 20 ss. 9(1), 9(2), 25.	- Copies of volumes of Acts shall be delivered or sent by post to MPs and Senators and public departments, administrative bodies and officers throughout Canada as directed by the Governor-in-Council Publication of Statutes Act R.S.C., c. 21, s. 10(2). - Likewise for Bills bearing Royal Assent, s. (12). - Four copies shall be delivered or sent without charge to one of the joint chairpersons of the Committee of the House of Commons, the Senate or both Houses established for the purpose of reviewing and scrutinizing statutory instruments. Statutes of Canada Distribution Direction, No 2 S1/89-140. - The Statute Revision Commission shall obtain a copy of every Act of Parliament as soon as it has received Royal Assent and will make arrangements for the distribution of such Acts to the public with the help of the Queen's Printer or federal government departments. Sub-section (2) provides that the Commission may make its services available to other departments to expedite the publication and distribution of the chapters of the Annual Statutes of Canada. Statutes Revision Act R.S.C. 1985, c. S-20, s. 24.

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

Jurisdiction	Publication	Distribution
Canada (cont'd)	- Regulations shall be published in the Canada Gazette within 23 days after they are registered if they are made pursuant to s. 20(c) Statutory Instruments Act R.S.C. 1985, c. S-22, s. 11(1). - The Governor-in-Council has the authority to direct that any statutory instrument or other document or any class thereof be published in the Canada Gazette if the publication would be in the public interest. s. 12. - The Clerk of the Privy Council shall prepare, and the Queen's Printer shall publish quarterly a consolidated index of all regulations and amendments to regulations s. 14. - The Statute Revision Commission has the authority to publish a consolidation of the regulations or parts of the consolidation in different formats.	- A copy of each regulation that is published in the Canada Gazette shall be provided to each member of the two Houses of Parliament by delivering a copy of the Canada Gazette. Statutory Instruments Act R.S.C c. S-22 s. 13. - A hard copy of the consolidated regulations will be delivered free of charge to those persons mentioned in schedule 1, i.e. the Governor General of Canada, each member of the government or Council of the provinces and territories, each official of each government whose duties consist of the administration or interpretation of federal regulations, each member of the judiciary, including stipendiary and police magistrates, each official of the Senate, the House of Commons and each department of the Government of Canada whose duties consist of the administration and interpretation of federal regulations, the Parliamentary Librarian, the National Librarian, the Chief Librarian of each provincial Legislature, the Chief Librarian of each Public Library in Canada, the President of the Parliamentary Press Gallery, the Canadian Ambassador to any country and the person in charge of a consular post in any country, the Chief librarian of the United Nations, members and officials of the Government of any country and persons holding positions in universities or institutions in any country if reciprocal arrangements exist for similar distribution without charge in Canada of the official gazette of that

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
	Canada (cont'd)		country. Consolidated Regulations Delivery Regulations, SOR 179-538, s. 3. - A softcover copy will be delivered to those persons mentioned in schedule II for a fee. The persons include specifically residents of Canada, the United States and Mexico and "residents" of countries not specified. s. 3. - "Copies of statutory instruments made or established more than 5 years prior to the request "are also delivered for inspection.
Stats.	Alberta	- The Lieutenant Governor-in-Council has the authority to direct the Queen's Printer to print and publish the Statutes of Alberta. Queen's Printer Act R.S.A 1980, c. Q-3 as. am. S.A. 1983, C. D-25.5, s. 23, S.A. 1988, c. 31, s. 19. - The Minister may direct the Queen's Printer to publish and distribute special issues of the Alberta Gazette, Queen's Printer Amendment Regulation, Alta Reg. 65/89, s. 5(1), 7.	
Regs.		- The registrar shall within one month of the filing of the regulations publish the regulation in the Alberta Gazette. Regulation Acts R.S.A. 1980, c. R-13, s. as. am. S.A. 1988, C. 42.	

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
Stats.	British Columbia	- As soon as possible after the close of each session of the Legislature, the Queen's Printer shall print the Acts, Journals, Sessional Papers and other printed documents placed before the Legislature during that session... Queen's Printer Act R.S.B.C 1979, c. 353, s. 5(1) as. am. S.B.C. 1984, c. 25, ss. 41, 42.	- The printed Acts etc ... shall be transmitted to each member of the Legislative Assembly on request, and to other persons, institutions, ministries and representative bodies, in or out of Province, as approved by the Minister, the number of copies of the Acts ... as he directs. Queen's Printer Act R.S.B.C. 1979, c. 353, s. 5(1) as am. S.B.C. 1984, c. 25, ss. 41, 42.
Regs.		- The Registrar shall publish in the Gazette each regulation deposited with him. Regulations Act S.B.C. 1983, s. 5(1) as. am. S.B.C. 1988, c. 5, s. 68, S.B.C. 1990, c. 33, s. 10.	
Stats.	Manitoba	- The Clerk of the Legislative Assembly shall give the Queen's Printer a copy of every Act as soon as it has received assent to enable the Queen's Printer to publish them. Public Printing Act S.M 1987/88, c. P. 240, s. 17.	- The Queen's Printer shall deliver or transmit by post the proper number of printed copies of the Acts of the Session to each member of the Assembly and to such public departments, administrative bodies and officers throughout Canada as may be specified in any order made by the Lieutenant Governor-in-Council. - Bills that have received assent shall be distributed in the same manner and in the same number of copies as above. Public Printing Act S.M. 1987/88 c. P. 240 ss. 18. - The Minister shall within 15 days after the close of the session of the Legislature provide the Queen's Printer with a list of all bodies and officers to whom copies are to be transmitted.
Regs.		- After registration of a regulation the registrar shall send a copy to the Queen's Printer for publication in the Gazette. - Where a consolidation is approved s. 15(1) of the Regulations Act provides for printing of the consolidation and revision. Regulations Act S.M. 1988/89 c. 7, ss. 4, 15(1), 17.	

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
			- The consolidation is to be printed and "made available to the public." Regulation Act S.M. 1988/90, c. 7, ss. 15(1)(c).
Stats.	New Brunswick	- The Queen's Printer shall print and publish the Royal Gazette, the Statutes of New Brunswick, the Journals of the Legislative Assembly Queen's Printer Act, R.S.N.B. 1973. c. Q-3, s. 4 as am. S.N.B. 1974, c. 44(supp.), S.N.B. 1975, c. 50, S.N.B. 1982, c. 54.	- The Queen's Printer shall deliver or transmit the proper number of printed copies of the Acts of the Legislature to the following parties: each member of the Legislature and to such public departments, administrative bodies, and officers, throughout Canada as may be specified from time to time by the Lieutenant-Governor-in-Council. Queen's Printer Act, R.S.N.B. 1973, c. Q-3, s. 4 as am. S.N.B. 1974, c. 44 (Supp.), S.N.B. 1975, c. 50, S.N.B. 1982 c. 54.
Regs.		- The Registrar shall within one month of filing publish every regulation in the Royal Gazette. Regulations Act, R.S.N.B. 1973, c. R-7, s. 3, as am. S.N.B. 1980, c. 48, S.N.B. 1983, c. 79. - A consolidation of all regulations shall be published from time to time. On the 31st day of each year, a supplement of all regulations and amendments made since the last preceding publication and a consolidated index and table of regulations and amendments revocations and other modifications made shall be published Regulations Act N.B. Reg 82-225, ss. 4, 5.	

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
Stats.	Newfoundland	- Bills that have been passed shall be bound at the close of each calendar year. The Statutes Act R.S.N. 1970, c. 362, s. 6(3), as am. S.N. 1975-76, s.9, S.N. 1977, c. 7, S.N. 1979, c. 51, s. 28, S.N. 1981, c. 58, s.3.	
		- The Minister may, with the approval of the Lieutenant-Governor-in-Council make such arrangements and enter into such agreements relating to the preparation, printing and distribution of the consolidation and revision...	- Same.
		- Other formats of the consolidation may be published.	
Regs.		- Subordinate legislation shall be published in the Gazette within one month of filing. The Statutes and Subordinate Legislation Act, S.N. 1977 c. 108, s.12, as m. S.N. 1978, c. 35, s. 22, S.N. 1979 c. 33 Sch. C., S.N. 1979, c. 51, s. 29, S. N. 1981 c. 85 s. 16, S.N. 1988 c. 35, s. 442(21).	
Stats.	Northwest Territories	- The Commissioner may authorize publication of an official gazette. Public Printing Ordinance, R.S.N.W.T. 1974, c. P-12, s.2.	
		- Part III of the Gazette contains the ordinances (statutes) enacted by the Council. Public Printing Regulations, R.R.N.W.T.1980, Reg. 225 s.4.	

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
Regs.		- All regulations, proclamations etc, shall be published in the Northwest Territories Gazette Public Printing Ordinance, R.S.N.W.T. 1974 , c. P-12, s.3. - Every statutory instrument shall be published in the Gazette within 3 months of being registered Regulations Ordinance R.S.N.W.T. 1974, c. r-4, ss. 9, 13 as am. S.N.W.T. 1981(1), c. 10, S.N.W.T. 1983(2), c. 8, s. 1, S.N.W.T. 1984(3), c. 7, ss. 101-106, S.N.W.T. 1989(2), c. 21 S. 13 of the same ordinance provides for the annual publication of a consolidated index of all the regulations.	- A copy of every statutory instrument that is published shall be provided to each member of the Council by delivery of a copy of the Gazette (s.11). - Copies of the Gazette shall be delivered free of charge to such persons or classes of persons in addition to those described in s. 1. Regulations Ordinance R.S.N.W.T. 1974, c. r-4, ss. 11,12 as am. S.N.W.T. 1981 (1) C.10, S.N.W.T. 1983(2), c. 8, s.1, S.N.W.T. 1984(3), C. 7, SS. 101-106, S.N.W.T. 1985(3), c. 9, ss. 1,2, S.N.W.T. 1989(2) C.21. - The persons or classes of persons to whom free copies are to be sent are set out in the following regulation. Regulations R.R.N.W.T. 1980, Reg. No. 239 as am. R-088-82, s.1.
Stats.	Nova Scotia	- The Queen's Printer shall cause to be published in the Gazette, statutes of the province etc ... Communication and Information Act, R.S.N.S. (1989) c. 79, ss. 7.	- The Executive Director shall transmit the proper number of printed copies of the Acts to the following persons: the members of the Assembly, public departments, administrative bodies, officials or other persons specified. s. 11(2). - Where any bill receives assent before the close of a session, appropriate copies of the bill will be sent to the same persons in a like manner. Communications and Information Act, R.S.N.S. 1989, c. 79, ss. 11(2), 14.

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
Regs.		- A regulation shall be published in the Gazette within 30 days from the day upon which the regulation was filed, s. 4. - After completion and examination, the Attorney General may cause the regulation incorporated in the report and schedules there to be printed under the general title of Revised and Consolidated Regulations of Nova Scotia. s. 22(5), Regulations Act, c. 393, ss. 4, 22(5).	- Every person is entitled to inspect a regulation filed with the Registrar and to obtain a copy of a regulation that has been filed with the Registrar. Regulations Act, R.S.N.S. 1989, c. 393, s. 10.
Stats.	Ontario	- The Queen's Printer shall print, publish and distribute the statutes from time to time. Statutes Act, R.S.O. 1980, c. 483, s. 6.	- Statutes Act, R.S.O. 1980, c. 483, s. 6. (see beside).
Regs.		- Every regulation shall be published in the Ontario Gazette within one month of its filing. Regulations Act, R.S.O. 1980, c. 446, s. 5.	- Regulations shall be made available for public inspection. Regulations Act Regulation, R.S.O. 1980, Reg 899, s. 4 as am. O. Reg. 592/83.
Stats.	Prince Edward Island	- The Queen's Printer shall print and publish the statutes of the province and the regulations made thereunder. Queen's Printer Act, R.S.P.E.I. 1988, Q. 1, s. 4(1)(a).	- No relevant legislation.
Regs.		- See above.	- No relevant legislation.

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
Stats.	Quebec	- Upon completion of the revision a bound edition and a loose-leaf edition of the Statutes will be printed. An Act Respecting the Consolidation of the Statutes and Regulation. R.S.Q. 1977, c. R-3, s. 11 as. am. S.Q. 1978, c. 17, S.Q. 1979, c. 42, S.Q. 1981, c. 23, S.Q. 1986, c. 61. - There shall be a printing and a publishing of an up to date text of the Revised Statutes of Quebec at least once a year in the loose-leaf edition only. An Act Amend the Act Respecting the Consolidation of Statutes. S.Q. 1978, c. 17, s. 21.	- Upon completion of the printing of the Revised Statutes a copy of the edition in both forms shall be sent to the Lieutenant-Governor, attested by his signature and that of the Minister of Justice and deposited in the office of the Secretary of the Assemblée Nationale. Act Respecting the Consolidation of the Statute and Regulations, R.S.Q. 1977, c. R-3, s. 11 as am. S.Q. 1978, c. 17, S.Q. 1979 c. 42, S.Q. 1981, c. 23, S.Q. 1986, c. 61, s. 12. - S. 22 states that the legislative provisions concerning the distribution of the Statutes do no apply to the distribution of the revised Statutes, which shall be carried out in the manner and in the terms and condition presented by the Government.
Regs.		- The Quebec Official Publisher shall print and publish a bound edition of the registered regulations indicated by the Minister of Justice. An Act to Amend Various Legislative Provisions. S.Q. 1981, c. 23, s. 25. - A loose-leaf edition of the revised regulations should be printed and published by the Editeur Officiel du Quebec as soon as possible. - An up-to-date text of the regulations shall be printed and published at least twice yearly. - An Act to Amend the Act Respecting the Consolidation of Statutes. S.Q. 1978, c. 17, s.s. 25, 28.	- No relevant legislation.

PUBLICATION AND DISTRIBUTION OF STATUTES AND REGULATIONS (cont'd)

	Jurisdiction	Publication	Distribution
Stats.	Saskatchewan	- The Queen's Printer shall print and publish or cause to be printed and published the Statutes of Saskatchewan as may from time to time be required. The Queen's Printer Act, R.S.S. 1978, c. Q-3, s. 4 as am. R.S.S 1987, (supp) c. 58, S.S. 1979-80, c. 93, S.S. 1986-87-88, c. 57, S.S. 1989-90, c. 21.	- As soon as possible after close of a session the Queen's Printer shall deliver or transmit printed copies of the Acts of the Legislative Assembly to send to public departments, administrative bodies, officers, librarians or persons in Canada or elsewhere as may be determined by order such copies as may by so determined. The Queen's Printer Act, R.S.S. 1978, c. Q-3, s. 10 as. am. R.S.S. 1978 (supp), c. 58, S.S. 1979-80, c. 93, S.S. 1986-87-88, c. 57, S.S. 1989-90, c. 21.
Regs.		- The Registrar shall cause to be published in the Gazette each filed regulation within 30 days of the date of its filing. Regulations Act, S.S. 1989-90, c. R-16.1, s. 6.	- The Registrar shall file with the Clerk of the Legislative Assembly a copy of every regulation. Regulations Act, S.S. 1989-90, c. R-16.1. s. 15.
Stats.	Yukon	- The Queen's Printer shall print and publish or cause to be printed and published ... the statutes of the Yukon Public Printing Act, R.S.Y. 1986, c. 139, s. 5.	- No relevant legislation.
Regs.		- The registrar shall within one month of the filing thereof, publish the title of every regulation in the Yukon Gazette. Regulations Act, R.S.Y. 1986, c. 151, s.3.	- No relevant legislation.

BIBLIOGRAPHY

Alberta Legal Information Technology Assessment. "Project Descriptions." Edmonton: University of Alberta. Faculty of Law, 1990.

Alexander, C. J. "Towards the Information Edge and Beyond: Enhancing the Value of Information in Public Agencies." (Draft). [Ottawa]: Justice Canada, 1990.

Allen, Brandt. "Make Information Services Pay Its Way." *Harvard Business Review*, Jan.-Feb. 1987, 57-63.

Baetz, Mary. *The Human Imperative: Planning for People in the Electronic Office*. Holt, Rinehart & Winston, 1985.

______. "Get the Most from Your Computer." *Inside Guide*, Winter 1989.

______. "Managing Transitions." *Liaison*, 1987.

Baetz, Mary, and Suzan Fawcett. "Why Well Meant Estimates (and Other Things) Go Awry." *Canadian Lawyer*, April 1986.

Baxter, Wayne. "1991 Census Products and Services Project." Presentation to the annual meeting of the Canadian Library Association, Ottawa, June 17, 1990. Statistics Canada, 1990.

Beer, Mitchell. *Government Database Colloquium, June 16, 1989: Report*. [Ottawa]: Canada. Department of Communications, n.d.

Boyko, Ernie S. "Directions for Electronic Products and Services at Statistics Canada." Presentation to the annual meeting of the Canadian Library Association, Ottawa, June 1990.

Burk, Cornelius F., Jr., and Forest W. Horton, Jr. *InfoMap: A Complete Guide to Discovering Corporate Information Resources*. Prentice Hall, 1988.

Burshtein, Sheldon. "Crown Copyright in Data Bases in Canada." Unpublished. Paper presented to the Canadian Association of Data and Professional Services Organizations, Toronto, June 6, 1989.

Canada. Department of Communications. "Government Databases: A Discussion Paper to Assist Federal Government Institutions in the Disseminating of Databases." Ottawa: Department of Communications, Communications Research Centre, December 5, 1989.

Canada. Department of Supply and Services. "Electronic license agreement." Photocopy.

Canadian Association of Law Libraries. "Brief on Stage 2 Amendments to the *Copyright Act*." October 1989.

Canadian Law Information Council. "From Gutenberg to Telidon: A Brief Respecting Crown Copyright in Reasons for Judgment." Submitted to the Copyright Subcommittee of the House Standing Committee on Communications and Culture, March 15, 1985.

______. "Planning for the Future of Legal Information Access in Canada; Many Challenges--Critical Choices: The Need for: Research, Development & Cooperation. An overview of the 1990/91 Program of Activities of the Canadian Law Information Council/Canadian Legal Information Centre."

Canadian Legal Information Centre. *Legal Information Access Ideals*. Discussion Paper. Fourth draft, May 15, 1990.

Chasse, Ken. "Management of Government Information Holdings. Which Do You Want, the MGIH or the GST?" *Legal Research Update*, December 1989, 3-4.

Copeland, Kenneth. "The Enabling Effect." Notes for remarks to GIS '90, Vancouver, March 14, 1990. Information Technology Association of Canada, 1990.

______. "The Giamatti Enablement: Leadership and the Role of Technology." February 22, 1990. Information Technology Association of Canada, 1990.

______. "The Marshal's Baton: The Enabling Effect and the Entrepreneur." Remarks to the Halifax Board of Trade, May 23, 1990. Information Technology Association of Canada, 1990.

Commission of the European Communities. Directorate General for Telecommunications, Information Industries and Innovation. *Guidelines for Improving the Synergy between the Public and Private Sectors in the Information Market*. Luxembourg: Office for Official Publications of the European Communities, 1989.

Council of Europe. *Protection of Personal Data Used for the Purposes of Direct Marketing*. Recommendation No. R(85) 20 adopted by the Committee of Ministers of the Council of Europe on 25 October 1985 and Explanatory memorandum. Strasbourg: Council of Europe, 1986.

Denison, Neil. "The Jean Talon Project. Compilation of Report Findings." Ottawa: Canada. Department of the Secretary of State, Education Support Branch, August 1990.

Federal Information Resources Management Act, S. 1742, 1990.

Gibson, Cyrus F., and Richard L. Nolan. "Managing the Four Stages of EDP Growth." *Harvard Business Review*, 52 (January-February 1974):76-88. Reprint No. 74104.

Hattery, Maxine. "What's New in Federal Information Policy." *Information Retrieval & Library Automation*, 26(4)(Sept. 1990):1-4.

Hughes, Graeme. "The Broadfoot Balance: Success through Information Technology and Appropriate Implementation." Remarks to the Financial Post Conference on Information Technology and Corporate Development, Toronto, May 14, 1990. Information Technology Association of Canada, 1990.

______. "Information Technology and Intellectual Property Rights -Emerging Issues." Remarks to the Institute for Research on Public Policy, April 25, 1990. Information Technology Association of Canada, 1990.

______. "The Magic and the Mastery: The Power to Enable and the Subtle Art of Managing It." Remarks to the International Conference on Regional Development, St. John's, Newfoundland, May 7, 1990. Information Technology Association of Canada, 1990.

"IMR Interview: Richard L. Nolan." *Information Management Review*, 3 (Fall 1987):85-95.

InfoGen. *Publishing Government Information in Electronic Form*. Vol. 1: *Findings and Recommendations: Electronic Publishing Case Studies Project*. N.p.: the Jean Talon Project (Sec. of State), the Canadian Workplace Automation Research Centre and the Interdepartmental Working Group on Database Industry Support, 1990.

InfoGen. *Publishing Government Information in Electronic Form*. Vol. 2: *Case Studies: Electronic Publishing Case Studies Project*. N.p.: the Jean

Talon Project (Sec. of State), the Canadian Workplace Automation Research Centre and the Interdepartmental Working Group on Database Industry Support, 1990.

InfoGen. *Publishing Government Information in Electronic Form.* Vol. 3: *Topics of Special Interest: Electronic Publishing Case Studies Project.* N.p.: the Jean Talon Project (Sec. of State), the Canadian Workplace Automation Research Centre and the Interdepartmental Working Group on Database Industry Support, 1990.

Infolink Consultants. *[Proceedings of the] National Colloquium on the Electronic Information Industry: Database Production, Distribution and Use, held May 5, 1988.* N.p.: Canada. Department of Communications. Canadian Workplace Automation Research Centre, 1989.

Information Technology Association of Canada. *The Enabling Effect. An ITAC Report on Using Information Technology for Strategic Advantage.* Toronto: Information Technology Association of Canada, n.d.

Lawford, Hugh. "The Old Man and the CD: A Pessimist's View of Future Canadian Legal Information." Notes for remarks at the 6th Annual Conference on Computers and Legal Education, Montreal, June 16, 1990. Halifax: QL Systems Limited,1990.

Little, D., and B. Mascall. *Putting the Pieces Together: Case Studies on the Deployment of Information Technology in Canada.* N.p.: Industry, Science and Technology Canada and Information Technology Association of Canada, [1989?].

McCracken, M.C. "Charges for Statistical Publications and Data." Memorandum to Dave McQueen, National Statistics Council, from M.C. McCracken, Informetrica. September 8, 1990.

McIntosh, Toby J., *Federal Information in the Electronic Age: Policy Issues for the 1990s,* The Bureau of National Affairs, Inc., 1990.

Nolan, Richard L. "Managing the Crises in Data Processing." *Harvard Business Review,* 57 (March-April 1979):115-126. Reprint no. 79206.

Treasury Board of Canada. Secretariat. *Management of Government Information Holdings.* Ottawa: Treasury Board of Canada. Administrative Policy Branch, reprinted 1989.

______. "Government Communications Policy." Chap. 480 of *Administrative Policy Manual*. Ottawa: Treasury Board of Canada. Secretariat, July 1988.

U.S. Congress. Office of Technology Assessment. *Informing the Nation: Federal Information Dissemination in an Electronic Age*. Washington, D.C.: U.S. Congress. Office of Technology Assessment, October 1988.